10-11-89
Vol. 54 No. 195

federal register

Wednesday
October 11, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

10-11-89
Vol. 54 No. 195
Pages 41577-41816

federal register

Wednesday
October 11, 1989

Briefings on How To Use the Federal Register
For information on briefings in Washington, DC, and New York City, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: October 19; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: 202–523–5240.

NEW YORK, NY

WHEN: October 24; at 1:00 p.m.
WHERE: Room 305A,
26 Federal Plaza,
New York, NY.

RESERVATIONS: Call Arlene Shapiro or Stephen Colon at the New York Federal Information Center. 212–264–4810.

Contents

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
6039 41577
6040 41579
6041 41581

7 CFR
906 41583
946 41585
989 41586
1434 41588
1435 41588
1765 41713
Proposed Rules:
51 (2 documents) 41597, 41599
968 41601
1948 41626

14 CFR
97 41590
Proposed Rules:
71 41713

21 CFR
510 41713
558 41713
Proposed Rules:
10 41629
310 41629
314 41629
320 41629

40 CFR
Proposed Rules:
52 41629

42 CFR
405 41716
411 41716
412 41716
489 41716

44 CFR
Proposed Rules:
67 41631

49 CFR
Proposed Rules:
571 (2 documents) 41632, 41636
1022 41643
1043 41643
1044 41643
1047 41643
1051 41643
1058 41643
1061 41643
1063 41643
1067 41643
1070 41643
1080 41643
1081 41643
1083 41643
1084 41643
1085 41643
1091 41643
1104 41643
1136 41643
1143 41643
1161 41643
1167 41643
1169 41643
1170 41643
1331 41643

50 CFR
661 (2 documents) 41591, 41592
663 41594
Proposed Rules:
216 41654

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

Presidential Documents

Title 3—

The President

Proclamation 6039 of October 5, 1989

National Children's Day, 1989

By the President of the United States of America

A Proclamation

Children are a great and precious blessing. Parents have no greater responsibility than to ensure that the young stranger God brings into their lives is welcomed, loved, nourished, and protected. As a Nation, we have no greater obligation than to help provide every child with the opportunity to grow up healthy, safe, and well-educated.

Children not only bring joy to their families; they also bring a sense of hope and purpose to the entire Nation. Parents, grandparents, and all adults can, and do, learn a great deal from the young. As we assist a child who is struggling to complete the tasks we take for granted, we are reminded of the importance of being gentle and patient. Fascinated by the countless little miracles of creation, which we grown-ups so often overlook as we rush to meet the demands of the adult world, children help us to see the world around us as if it were fresh and new. Filled with imagination and dreams, they take us into the future—and inspire us to be responsible for it.

As a Nation, we owe it to our children to encourage and help parents and families. Family life is important in promoting not only each child's spiritual, social, and intellectual growth, but also the strength of our Nation. When the hope and trust of a child are violated or destroyed, so, too, is a portion of the promise that he or she holds for our country's future. Because parents are a child's first and best friends, and because home is his or her first school, we must remain committed to policies and programs that recognize and reinforce the family as the primary source of the love and support that every child needs.

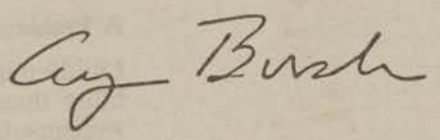
Children in the United States have the opportunity to grow up in a land of unparalleled prosperity and freedom. However, we must remember that our children need much more than material goods. We must also remember the importance of teaching them the difference between liberty and license, for one is rooted in respect for human dignity, while the other only diminishes it. Children need attention and affection and positive role models. It is important that parents take the time not only to give their children guidance, but also to listen to them. The greatest gifts we can share with our little ones are a love of learning, an appreciation for the power of faith and hard work, and a sense of personal responsibility and concern for others.

Children both affirm and inspire their parents' faith in the future. As parents, teachers, neighbors, and as a Nation, we must make every effort to ensure that young people's own faith is not jaded by abuse or neglect or simple indifference. So, today, as we honor children, let us also renew our determination to ensure that they receive all the love, protection, and encouragement they need and deserve.

The Congress, by House Joint Resolution 132 (Public Law 101–52), has designated the second Sunday in October 1989 as "National Children's Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 8, 1989, as National Children's Day. I call upon the American people to observe that day with appropriate programs, ceremonies, and activities designed to honor children and to emphasize the importance of their well-being to our entire Nation. I also urge all Americans to reflect upon the importance of children to our families, as well as the importance of strong families to our children.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-24096
Filed 10-6-89; 2:18 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6040 of October 6, 1989

Columbus Day, 1989

By the President of the United States of America

A Proclamation

On Columbus Day, we pause as a Nation to honor the skilled and courageous navigator who discovered the Americas and, in so doing, brought to our ancestors the promise of the New World. In honoring Christopher Columbus, we also pay tribute to the generations of brave and bold Americans who, like him, have overcome great odds in order to chart the unknown.

For nearly half a millennium, Americans have followed the example of this great explorer, challenging the frontiers of knowledge. Throughout our Nation's history, the spirit of discovery has been demonstrated by scholar and student, expert and novice, alike. While the efforts of men such as Lewis and Clark, Thomas Edison, Eli Whitney, and Alexander Graham Bell are well known, we should also remember the thousands of pioneers who quietly tamed the American wilderness. With courage, ingenuity, hard work, and sacrifice, these men and women helped to build a Nation.

Generations of American entrepreneurs and business people have likewise accepted great risks in order to pursue their dreams. Their vision and initiative, allowed to flourish in this land of liberty, have helped the United States grow strong and prosperous.

From test pilots and astronauts to scientists and researchers in virtually every field of endeavor, Americans have continued to explore not only the wonders of our planet, but also the great mysteries of space. Like Christopher Columbus, all of these Americans have faced the unknown, not with a reckless sense of adventure, but with a great sense of purpose and opportunity.

Just a few years from now, in 1992, the United States will commemorate the 500th anniversary of the arrival of Columbus on these shores and proudly participate in events honoring this great explorer. A number of educational and commemorative events and programs are also being planned by the members of the Christopher Columbus Quincentenary Jubilee Commission, which was established by the Congress in 1984.

Americans of Italian and Spanish descent will have special reason to join in this quincentenary celebration. As we reflect on the achievements of this famous son of Genoa, and the generous support he received from Spanish monarchs Ferdinand V and Isabella I, we are also reminded of the many contributions that men and women of Italian and Spanish descent have made and continue to make to our Nation.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution of April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 9, 1989, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 89-24154
Filed 10-6-89; 4:46 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6041 of October 6, 1989

Leif Erikson Day, 1989

By the President of the United States of America

A Proclamation

Each year, we Americans pause on Leif Erikson Day to commemorate the life and legacy of this courageous Norse missionary and explorer. In remembering the young Viking who travelled to North America nearly a millennium ago, we also celebrate our Nation's Nordic heritage.

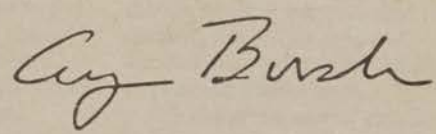
Son of "Erik the Red," who led the first group of Europeans to colonize Greenland, Leif Erikson returned to his native Norway in the year 1000. A year after his conversion to Christianity there, Erikson was commissioned by King Olaf Tryggvason (Olaf I) to return to Greenland as a missionary. During his lengthy travels, the young navigator visited new, unknown lands. Calling the places he discovered Helluland, Markland, and Vinland, Erikson described their pristine beauty in his journal. Centuries later, other European explorers, inspired by Erikson's account, decided to pursue his exciting discovery and journeyed to these shores.

Although American history is filled with testaments to the faith and courage of many a missionary and explorer, Leif Erikson has remained a beloved symbol of valor. Displaying the same vision and daring embodied by "Leif the Lucky," generations of Scandinavian immigrants have since followed his path to North America. Leif Erikson Day provides an opportunity to pay tribute to those industrious and determined Nordic peoples who have settled in the United States, and to honor them for their many contributions to our Nation. On this special occasion, we also celebrate the close relations between the people of the United States and our friends in all the Nordic countries.

In honor of Leif Erikson and the heritage of America's Nordic people, the Congress, by joint resolution approved on September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), has authorized the President to proclaim October 9 of each year as "Leif Erikson Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 9, 1989, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. I also invite the people of the United States to honor Leif Erikson and our Nordic-American heritage by holding appropriate exercises and ceremonies in suitable places throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-24155
Filed 10-6-89; 4:47 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV-89-095IR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Relaxation of Minimum Size Requirements for Texas Grapefruit and Container Requirements for Texas Oranges and Grapefruit—M.O. 906

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action delays the effective date of a final rule tightening minimum size requirements for fresh Texas grapefruit shipments until the 1990–91 shipping season and each season thereafter. Under the final rule, the minimum size requirements for grapefruit were to be tightened by prohibiting the shipment of any grapefruit smaller than pack size 96 during the period November 16 through January 31 each season, beginning in 1989. However, this delay in the effective date of that rule reflects current crop and marketing conditions which make implementation of the final rule impracticable. This action also authorizes Texas orange and grapefruit handlers to use two additional containers for shipping fresh fruit to market in order to provide Texas citrus handlers more flexibility in packing and shipping their fruit. This rule is expected to help the Texas citrus industry successfully market the 1989–90 orange and grapefruit crops.

DATES: Container requirements for Texas oranges and grapefruit become effective October 11, 1989. The effective date of the January 24, 1989 (54 FR 3420) rule tightening minimum size requirements for Texas grapefruit is delayed until February 1, 1990. Comments which are received by November 13, 1989 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 906, both as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 78 handlers of oranges and grapefruit subject to regulation under the marketing order for oranges and grapefruit grown in Texas. In addition, there are approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Section 906.365 (7 CFR 906.365) of the order specifies minimum grade and size requirements for fresh shipments of oranges and grapefruit grown in Texas. The current minimum size requirements require fresh grapefruit to be at least pack size 96 (3$^{9}/_{16}$ inches in diameter), except that grapefruit grading at least U.S. No. 1 may be shipped if they are at least pack size 112 (3$^{5}/_{16}$ inches in diameter). These requirements are in effect on a continuous basis from season to season unless changed. Under a final rule (54 FR 3420, January 24, 1989), minimum size requirements for fresh Texas grapefruit were tightened to prohibit shipment of size 112 grapefruit during the period November 16 through January 31 each season, effective November 16, 1989. This action delays the effective date of that rule until February 1, 1990 to permit the shipment of pack size 112 grapefruit grading at least U.S. No. 1 throughout the 1989–90 season. In addition, miscellaneous changes to § 906.365 to delete obsolete language and to update references to the standards also would be delayed.

The Texas Valley Citrus Committee (committee), which administers the program locally, expects good marketing opportunities for size 112 grapefruit this season due to a reduced supply of smaller sized Texas grapefruit due to winter freeze damage. The committee also expects that an increased volume of smaller sized Florida grapefruit will be shipped to Canada this year. In addition, the committee expects that the juice market, the major alternative outlet for small Texas grapefruit, will be depressed this season.

Allowing the use of smaller size 112's in fresh markets this entire season will provide handlers and growers in the

production area the opportunity of obtaining greater returns. The committee believes that the 1990–91 season growing and marketing conditions will have returned to normal, and thus, the tighter requirements should become effective during the November 16 through January 31 period during the 1990–91 season and each season thereafter.

Section 906.340 (7 CFR 906.340) of the order specifies container, pack, and container marking requirements on a continuous basis for fresh shipments of oranges and grapefruit grown in Texas. The current container requirements require Texas oranges and grapefruit handlers to use specific containers for shipping fresh fruit to market. This action authorizes handlers to use two additional containers, both of which were used on an experimental basis last season and found to be suitable for shipping fresh citrus to market. These containers should provide Texas citrus handlers with more flexibility in packing and shipping their fruit. One of these containers is a poly or vexar bag with a capacity of four pounds of fruit. Only orange shipments will be permitted in this container, and this container must be packed in the master container specified in paragraph (a)(1)(iii) of this section. The other container is a mesh type bag with a capacity of ten pounds of fruit to be used only when packed in the master container specified in paragraph (a)(1)(iii) of this section.

This action also makes conforming changes necessary in paragrpah (a)(1)(iii) to permit the master container authorized under that paragraph to be used for the two newly authorized containers. In addition, a change is made for clarity to paragraph (a)(1)(ix) which is redesignated as paragraph (a)(1)(xi). Container requirements are designed to ensure that fresh citrus is packed in suitable containers, so that it arrives in the marketplace in good condition.

The committee met August 1, 1989, and unanimously recommended these relaxations. The committee meets prior to and during each season to review the handling requirements for Texas oranges and grapefruit, which are in effect on a continuous basis. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information to determine whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Texas orange and grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this marketing order. Exempt from such handling requirements are shipments made: (1) Within the production area (Cameron, Hidalgo, and Willacy counties in Texas); (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the order's current 400 pound minimum quantity exemption provisions, and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors for processing may be exempted from the handling requirements.

Section 8e of the Act [7 U.S.C. 698e–1] provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they met the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Section 8e also provides that whenever two or more current marketing orders regulate a single commodity produced in different areas of the United States, the Secretary shall determine which area produces the commodity in most direct competition with the imported commodity. Imports anywhere in the United States must then meet the quality standards set for that particular area.

Minimum grade and size requirements for grapefruit imported into the United States are specified in § 944.106 [7 CFR part 944], and are effective under Section 8e of the Act. These import requirements are based upon Florida grapefruit requirements issued under M.O. 905 (7 CFR Part 905), and require imported grapefruit to meet the same minimum grade and size requirements as those specified for the various varieties of Florida grapefruit in Table I of paragraph (a) in § 905.306. Accordingly, the findings and determinations for imported grapefruit in Part 944 would not be changed by this action and no change in the provisions of Part 944 is necessary. Thus, import requirements would continue to be based upon Florida grapefruit requirements under M.O. 905.

This action reflects the committee's and the Department's appraisal of the need to issue the relaxed requirements. The Department's view is that this action will have a beneficial impact on producers and handlers because it will permit 1989–90 grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas oranges and grapefruit over the past several years has been beneficial to the Texas citrus industry in marketing their crop.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes handling requirements for Texas citrus; (2) Texas citrus handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they need no additional time to comply with the relaxed requirements; (3) shipment of the 1989–90 season Texas citrus crop has begun, and these changes should be in effect as soon as possible to be of maximum benefit to the industry; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements and orders, Oranges, Texas.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The effective date of the final rule (54 FR 3420, January 24, 1989), amending § 906.365 effective November 16, 1989, is hereby delayed until February 1, 1990.

3. Section 906.340 is amended by revising paragraph (a)(1)(iii), redesignating paragraph (a)(1)(ix) as (a)(1)(xi) and revising new paragraph

(a)(1)(xi), and adding new paragraphs (a)(1)(ix) and (a)(1)(x) to read as follows:

(Note: This action will be published in the Code of Federal Regulations).

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) * * *

(iii) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and a depth from 9¾ to 10¾ inches: *Provided,* That the container has a Mullen or Cady test of at least 250 pounds: *Provided further,* That the container is used only for the shipment of eight five-pound bags or five eight-pound bags of fruit authorized in paragraph (a)(1)(iv), or for the shipment of the four pound bag authorized in paragraph (a)(1)(ix), or for the ten pound bag authorized in paragraph (a)(1)(x);

* * * * *

(ix) Poly or vexar bag having capacity of four pounds of fruit: *Provided,* That only oranges are to be packed in this bag, and these bags shall only be shipped in the container specified in paragraph (a)(1)(iii);

(x) Mesh type bag having a capacity of ten pounds of fruit: *Provided,* That fruit packed in such bags shall be handled only when packed in the container specified in paragraph (a)(1)(iii);

(xi) Such types and sizes of containers as may be approved by the committee for testing in connection with a research project conducted by or in cooperation with the committee: *Provided,* That the handling of each lot of fruit in such test containers shall be subject to prior approval and under the supervision of the committee.

* * * * *

Dated: October 5, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-23925 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 946

[Docket No. FV-89-084]

Irish Potatoes Grown in Washington; Amendment to Handling Regulation to Exempt Handlers From Reinspection of U.S. No. 1 Grade Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule exempts from reinspection requirements U.S. No. 1 grade or better potatoes that are resorted or repacked within 72 hours of the original inspection. Currently all inspected potatoes which are repacked must be reinspected. Exempting high quality potatoes from reinspection under specified conditions will lessen the regulatory requirements on handlers and help to reduce operating costs.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 477-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 475 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

On June 21, 1989, the State of Washington Potato Committee (committee) met and unanimously recommended amending the handling regulation to exempt previously inspected and certified U.S. No. 1 grade or better potatoes from reinspection after resorting or repacking if such potatoes are repacked in the State of Washington within 72 hours of the original inspection.

The handling regulation effective under Marketing Order No. 946 specifies the quality and other requirements that must be met in order for potatoes to be handled. For example, all varieties must be at least U.S. No. 2 grade. Also, round types must be at least 1⅞ inches in diameter except that round reds or yellow fleshed potatoes must be at least one inch in diameter. Sections 946.60 and 946.336(g) (53 FR 8144) require potatoes handled in the State of Washington to be inspected and certified as meeting these requirements. Section 946.60(b) of the marketing order further requires that potatoes that are regraded, resorted or repackaged be reinspected prior to shipment.

Potatoes are customarily packed in a number of different containers of varying size, type and construction. The actual container used is usually determined by many market factors, including the preference of the buyer. Potatoes that are graded and packed in a specific container are sometimes repackaged in different containers in response to changes in these market requirements.

The purpose of reinspection is to ensure that the minimum quality requirements are met. This action is limited to U.S. No. 1 or better potatoes which should assure a high quality pack. Requiring reinspection of these potatoes is unnecessary to accomplish the above stated purpose and therefore constitutes an undue hardship on handlers under § 946.60(a) of the order. The committee therefore recommended that U.S. No. 1 grade or better potatoes that have been previously inspected be exempt from the reinspection requirements of § 946.60(b), if repacked by a handling facility in the State of Washington within 72 hours of the original inspection. A maximum time limit of 72 hours will help to ensure that the quality of repackaged potatoes does not significantly deteriorate prior to shipment.

The committee believes that a lot of U.S. No. 1 grade or better potatoes, when repacked, will not be of significantly different quality when resorted or repacked within 72 hours of the original inspection. The committee did not, however, recommend permitting U.S. No. 2 grade potatoes that are resorted or repackaged to be shipped without being reinspected. If lots of U.S. No. 2 grade potatoes were resorted, the

better quality potatoes in the lot could be segregated and sold as a higher grade, while those lower quality potatoes sorted out of the lot could fail marketing order requirements even though officially covered by an original inspection and certification. The committee further believes that, in order to maintain control of regraded potatoes, this rule should apply only to potatoes handled by Washington shippers.

Permitting handlers to repackage No. 1 or better grade potatoes within 72 hours of the original inspection without requiring reinspection will have a positive impact on them by decreasing inspection costs. Moreover, reducing these costs to handlers should tend to increase returns to growers.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Notice was given of this action by a proposed rule published in the August 18, 1989, issue of the **Federal Register** (54 FR 34184) which provided interested persons until September 5, 1989, to file written comments. None were received.

After consideration of all relevant matters, including the information set forth in the proposal, it is hereby found that this action, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the shipping season has begun and this regulation should apply to as many shipments as possible to be of maximum benefit to industry.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 946.336 is amended by designating the existing text of paragraph (g), which begins "Except when relieved", as paragraph (g)(1) and by adding a new paragraph (g)(2) as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 946.336 Handling regulation.

* * * * *

(g)(1) * * *

(2) U.S. No. 1 grade or better potatoes in the State of Washington which are resorted or repacked within 72 hours of being inspected and certified are exempt from reinspection.

* * * * *

Dated: October 5, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23926 Filed 10–10–89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 989

[Docket No. FV–89–057FR]

Raisins Produced From Grapes Grown in California; Deletion of Conversion Factors for Partially Reconditioned Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule deletes weight conversion factors that are applied when handlers partially recondition raisins. This action was unanimously recommended by the Raisin Administrative Committee (RAC), which is responsible for local administration of the order. The change reflects current industry operations.

EFFECTIVE DATE: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms (handlers) are defined as those whose gross annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This final rule deletes certain weight conversion factors under the federal marketing order for California raisins. This action will delete the conversion factors that are applied when handlers partially recondition raisins.

When handlers acquire raisins from producers, all payments are made on the basis of the creditable weight of the lot of raisins. The creditable weight is based on the net natural condition weight, adjusted for the presence of substandard raisins and the maturity of the raisins in the lot. Paragraph (d) of § 989.58 of the marketing order requires the federal inspection of raisins acquired or received by handlers. Inspectors determine if the raisins meet minimum grade and condition requirements established under the marketing order. Determining the maturity of the raisins and the presence of substandard raisins are part of the inspection process.

In order to convert the net weight of reconditioned or partially reconditioned raisins to a natural condition weight, factors have been established, in § 989.601, for several varietal types of raisins. The natural condition weight is obtained by dividing the net weight of the raisins by the conversion factor.

Two sets of conversion factors have been established to convert the weight of reconditioned raisins to a natural condition weight. There is one factor for partially reconditioned raisins (weight taken after passing through a stemmer

or blower) and one for fully processed raisins (weight taken after completion of processing). This final rule will delete the conversion factors for partially reconditioned raisins. The factors for fully processed raisins will remain unchanged. The conversion factors apply to Natural (sun-dried) Seedless raisins, Golden Seedless raisins, Dipped Seedless raisins, Muscats, Sultanas, Zante currants, and Oleate and Related Seedless raisins.

Partial or dry reconditioning consists of passing the raisins through a vacuum or blower mechanism to remove substandard raisins, foreign material, large stems, and other debris.

As improvements in the minimum grade and condition standards for raisins have been implemented in recent seasons, producers have done more to prepare their raisins for delivery to handlers. More producers have purchased and are using shakers, some of which have vacuums or blowers installed, to assist in removing substandard raisins, foreign material, and large stems. Due to the cost of these investments, there are situations where producers with this equipment are "shaking" other producers' raisins for a fee before the raisins are delivered to a handler.

The industry is of the opinion that this activity should not be discouraged. Generally, producers can improve the maturity of the raisins delivered to a handler by removing substandard and very low maturity raisins.

Presently, if a producer delivers to a handler raisins which fail due to substandard or foreign material, the producer has three options: (1) Take the raisins back and recondition them or have another producer recondition them; (2) leave the raisins at the handler's premises and have the handler recondition them; or (3) have the raisins delivered to a dehydrator for reconditioning. The reconditioning process at the handler's or dehydrator's premises is performed under the surveillance of the Federal inspectors. If a handler reconditions the raisins by dry reconditioning or partially reconditioning the raisins, the handler is required to convert the weight of the raisins to a natural condition weight by applying a conversion factor.

For example, a handler receives from a producer 100 tons of natural (sun-dried) seedless raisins and partially reconditions them. After partial reconditioning, the lot of raisins weighs 80 tons. To determine the equivalent natural condition weight of the raisins, a conversion factor of 0.94 would be applied to the 80 tons. Eighty tons divided by 0.94 equals roughly 85.1 tons. Therefore, the producer would be credited with delivering 85.1 tons of natural condition raisins to the handler.

However, if a producer delivers 80 tons of partially reconditioned raisins to a handler, the conversion factor would not be applied. Thus, in this situation, the producer would receive credit for delivering only 80 tons of raisins.

The dry reconditioning or partial reconditioning procedure used by handlers and dehydrators is virtually the same as the shaker systems with vacuums or blowers used by many producers, and no conversion factors are applied to such producer processes. Whether raisins are subject to shakers or vacuums by handlers or producers, there is still some loss (shrinkage) when the raisins are ultimately processed by handlers.

In addition, handlers who are required to apply a conversion factor to raisins are refusing to accept raisins for reconditioning since they must pay for more raisins after application of the conversion factors than they actually have available after reconditioning. Thus, if the conversion factors for partially reconditioned raisins are not deleted, producers may lose a reconditioning source, have to pay extra handling costs, and need to seek alternative sources to remove the substandard raisins or foreign material which caused the raisins to fail the minimum grade and condition standards.

To correct the situation, the RAC has recommended that the conversion factors no longer be applied to the weight of raisins partially reconditioned by handlers. This action will delete those factors and bring the regulation into line with current industry operations.

Notice of this action was published in the **Federal Register** on August 21, 1989 (54 FR 34525). Written comments were invited from interested persons until September 5, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the RAC's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

It is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action deletes weight conversion factors applied to partially reconditioned raisins. It should be effective as soon as possible since August 1 was the beginning of the 1989–90 crop year and producers have begun delivering new crop raisins to handlers. This rule should be in effect for as much of the remainder of this crop year as possible as well as for subsequent crop years.

List of Subjects in 7 CFR part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 989.601 is revised to read as follows:

§ 989.601 Conversion factors for raisin weight.

The following factors for the named varietal types of raisins shall be used to convert the net weight of reconditioned raisins acquired by handlers as packed raisins to natural condition weight. The net weight of the raisins after the completion of processing shall be divided by the applicable factor to obtain the natural condition weight: *Provided*, That the adjusted weight does not exceed the original weight of the raisins prior to reconditioning; and *Provided further*, That, if the adjusted weight exceeds the original weight, the original weight will be used.

Varietal type	Conversion factor
Natural (sun-dried) seedless	0.92
Golden seedless	.95
Dipped seedless	.95
Muscats (including raisins with seeds):	
Seeded	.80
Unseeded	.92
Sultana	.9.2
Zante currant	.91
Oleate and Related Seedless	.92

Dated: October 5, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–23927 Filed 10–10–89; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Parts 1434 and 1435

Price Support and Production Adjustment Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The regulations at 7 CFR Parts 1434 and 1435 set forth the terms and conditions of the Commodity Credit Corporation (CCC) price support loan programs for honey and sugar, respectively. The amendments made by this interim rule will provide greater clarity, enhance the administration of CCC programs, and eliminate obsolete provisions.

DATE: Effective: October 11, 1989. Comments must be received by November 13, 1989.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: David Wolf, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–4229.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major". It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

The proposed reporting and record keeping requirements of this rule have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

In order to more effectively administer its commodity price support programs, over the past year CCC has reviewed various program regulations and program contracts in order to develop more uniform program provisions. Accordingly, this interim rule amends the honey price support program regulations at 7 CFR part 1434 to delete obsolete provisions and make changes to conform to the CCC price support loan agreement. This interim rule also amends the sugar price support program regulations at 7 CFR part 1435 in order to make similar changes and to make revisions for clarity.

Since producers are currently pledging honey as collateral for CCC price support loans, and sugar processors will shortly begin to obtain sugar price support loans, this interim rule needs to be made effective upon publication in the **Federal Register**. Comments are requested and will be taken into consideration when developing the final rule.

List of Subjects

7 CFR Part 1434

Honey, Loan programs—agriculture, Price support programs.

7 CFR Part 1435

Sugar, Loan programs—agriculture, Price support programs.

Accordingly, title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1434—[AMENDED]

1. The authority citation for 7 CFR part 1434 continues to read as follows:

Authority: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c

2. Section 1434.1 is revised to read as follows:

§ 1434.1 Applicability.

(a) The regulations of this part are applicable to the 1989 and subsequent crops of extracted honey. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC"). Additional terms and conditions are set forth in the note and security agreement which must be executed by a producer in order to receive price support.

(b) The forms for use in connection with this program shall be prescribed by CCC. The forms may be obtained in State and county ASCS offices.

3. Section 1434.2 is revised to read as follows:

§ 1434.2 Administration.

(a) The price support program which is applicable to a crop of honey shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related

documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

3. Section 1434.21(b) is revised to read as follows:

§ 1434.21 Loss or Damage.

* * * * *

(b) The physical loss or damage resulting solely from an external cause such as fire which is not the result of improper storage of the commodity; windstorm; or flood. CCC will not assume any loss or damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft;

* * * * *

4. Section 1434.28 is removed and reserved.

§ 1434.28 [Removed and reserved]

PART 1435—[AMENDED]

5. Sections 1435.300 and 1435.301 are revised to read as follows:

§ 1435.300 Applicability.

(a) The regulations of this subpart are applicable to the 1989 and subsequent crops of sugar beets and sugarcane. These regulations set forth the terms and conditions under which price support loans shall be entered into by the Commodity Credit Corporation ("CCC") with eligible processors. Additional terms and conditions are set forth in the loan application and note and security agreement which must be executed by a processor in order to receive such a loan. The collateral for such a loan must be eligible sugar which is stored in eligible storage. Only eligible sugar which is in eligible storage shall be accepted for delivery by CCC in settlement of the loan.

(b) Price support loan rates and the forms which are used in administering the price support program for a crop of sugar beets or sugarcane are available in State and county Agricultural Stabilization and Conservation Service ("ASCS") offices ("State and county offices", respectively).

§ 1435.301 Administration.

(a) The price support program which is applicable to a crop of sugar beets or sugarcane shall be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees ("State and county committees", respectively).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also: (1) Correct, or require a county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, an action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator, State and County Operations, ASCS, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the price support program.

(f) A representative of CCC may execute price support loans and related documents only under the terms and conditions determined and announced by CCC. Any such document which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1435.303 [Amended]

6. Section 1435.303 is amended by removing "1986" each place it appears and adding in lieu thereof "1989".

7. Section 1435.305(c) is revised to read as follows:

§ 1435.305 Availability, disbursement, and maturity of loans.

* * * * *

(c) *Disbursement of loans.* Disbursement will be made by means of checks drawn on the account of CCC. Disbursements shall be made without regard to the actual polarity of the sugar pledged as collateral for the price support loan but shall be made on the assumption that the polarity of such sugar is 96 degrees by the polariscope. Adjustments for polarity will be made at the time of the settlement of the loan.

* * * * *

8. Section 1435.307(b)(5)(ii) is revised to read as follows:

§ 1435.307 Loan maintenance and liquidation.

* * * * *

(b) * * *

(5) * * *

(ii) The physical loss or damage resulted solely from an external cause such as fire which is not the result of improper storage of the sugar; windstorm; or flood. CCC will not assume any loss of damage resulting from insect infestation, rodents, vermin, spontaneous combustion, excessive heat, or theft;

* * * * *

9. Section 1435.310(b) is revised to read as follows:

§ 1435.310 Fees, charges, interest, and bonding.

* * * * *

(b) *Interest.* Interest which accures with respect to a loan shall be determined in accordance with part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accure interest in accordance with part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accure in accordance with part 1403 of this chapter beginning on the required settlement date.

* * * * *

10. Section 1435.311(d) is revised to read as follows:

§ 1435.311 Miscellaneous provisions.

* * * * *

(d) *Liens.* If there are any liens or encumbrances on sugar pledged as collateral for a price support loan, waivers that fully protect the interest of CCC must be obtained even though the liens or encumbrances are satisfied from the loan proceeds. No additional liens or encumbrances shall be placed on the sugar after the loan is approved.

* * * * *

Signed at Washington, DC, on October 4, 1989.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation, Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 89-23977 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26028; Amdt. No. 1410]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows.

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on September 30, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective November 16, 1989*

El Dorado, AR—Goodwin Field, LOC RWY 22, Amdt. 5
Panama City, FL—Panama City-Bay County, NDB RWY 14, Amdt. 4
Panama City, FL—Panama City-Bay County, ILS RWY 14, Amdt. 14
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 14L, Amdt. 28
Chicago, IL—Chicago-O'Hare Intl, ILS RWY 14R, Amdt. 29
Pekin, IL—Pekin Muni, VOR-A, Amdt. 5
Pekin, IL—Pekin Muni, RNAV RWY 9, Amdt. 4
Paducah, KY—Farrington Airpark, VOR/DME-B, Amdt. 3
Sanford, ME—Sanford Muni, VOR RWY 07, Amdt. 3
Sanford, ME—Sanford Muni, VOR RWY 25, Amdt. 13
Beatrice, NE—Beatrice Municipal, VOR RWY 35, Amdt. 4
Minden, NE—Pioneer Village Field, VOR RWY 34, Orig.
Newburgh, NY—Stewart Intl, ILS RWY 9, Amdt. 5
Clemson, SC—Clemson-Oconee County, VOR/DME RWY 25, Orig.
Sioux Falls, SD—Joe Foss Field, RADAR-1, Amdt. 8
Nashville, TN—Nashville International, LDA/DME RWY 2C, Amdt. 2
Nashville, TN—Nashville International, NDB RWY 2C, Amdt. 5
Nashville, TN—Nashville International, NBD RWY 2L, Amdt. 5
Nashville, TN—Nashville International, ILS RWY 2L, Amdt. 6
Nashville, TN—Nashville International, ILS RWY 2R, Orig.
Nashville, TN—Nashville International, ILS RWY 20L, Orig.
Nashville, TN—Nashville International, ILS RWY 20R, Amdt. 5
Nashville, TN—Nashville International, ILS RWY 31, Amdt. 6
Richland, WA—Richland, VOR RWY 25, Amdt. 6
Richland, WA—Richland, VOR/DME-A, Amdt. 5
Richland, WA—Richland, LOC RWY 19, Amdt. 5
Richland, WA—Richland, NDB RWY 19, Amdt. 5

** * * Effective October 19, 1989*

DuBois, PA—DuBois-Jefferson County, VOR/DME RWY 7, Amdt. 3
DuBois, PA—DuBois-Jefferson County, ILS RWY 25, Amdt. 7
DuBois, PA—DuBois-Jefferson County, RNAV RWY 7, Amdt. 1

** * * Effective August 29, 1989*

Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Amdt. 5

** * * Effective September 23, 1989*

Temple, TX—Draughon-Miller Muni, VOR RWY 15, Amdt. 15
Temple, TX—Draughon-Miller Muni, VOR RWY 33, Amdt. 1
Temple, TX—Draughon-Miller Muni, LOC/DME BC RWY 33, Amdt. 2
Temple, TX—Draughon-Miller Muni, ILS RWY 15, Amdt. 9

** * * Effective September 22, 1989*

Provincetown, MA—Provincetown Muni, NDB RWY 25, Amdt. 2
Provincetown, MA—Provincetown Muni, NDB-A Amdt. 7
Provincetown, MA—Provincetown Muni, ILS RWY 7, Amdt. 3
Kalispell, MT—Glacier Park Intl, VOR RWY 30, Amdt. 8

** * * Effective September 21, 1989*

Tipton, IA—Mathews Memorial, VOR RWY 11, Amdt. 1
Islip, NY—Long Island MacArthur, ILS RWY 24, Amdt. 1

** * * Effective September 18, 1989*

Guymon, OK—Guymon Muni, NDB RWY 18, Amdt. 5

** * * Effective September 15, 1989*

Denver, Co—Stapleton Intl, LOC RWY 18, Amdt. 4

[FR Doc. 89-23918 Filed 10-10-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of (1) the treaty Indian ocean salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Point Chehalis, Washington, at midnight, September 5, 1989; (2) the commercial salmon fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, September 10, 1989; and (3) the commercial salmon fishery in the EEZ from Sisters Rocks to Mack Arch, Oregon, at midnight, September 14, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that the closure is necessary to conform to the preseason notice of 1989 management measures. This action is intended to ensure conservation of chinook and coho salmon.

EFFECTIVE DATES: (1) 2400 hours local time, September 5, 1989, for the closure of the treaty Indian fishery from the U.S.-Canada border to Point Chehalis, Washington; (2) 2400 hours local time, September 10, 1989, for the closure of the commercial fishery from Leadbetter Point, Washington, the Cape Falcon, Oregon; and (3) 2400 hours local time, September 14, 1989, for the closure of the commercial fishery from Sisters Rocks to Mack Arch, Oregon. Actual notice to affected treaty Indian fishermen of the closure of the Indian fishery was provided by the treaty tribes and by tribal regulations. Actual notice to affected fishermen of the non-Indian closures was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Public comments are invited until October 20, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1989 management measures (54 FR 19798, May 8, 1989), NOAA announced that the treaty Indian ocean fishery for all salmon species except coho salmon would begin May 1 and continue through the earlier of June 30 or the attainment of the chinook quota, and the treaty Indian ocean fishery for all salmon species would begin on July 1 and continue through the earliest of September 30 or the attainment of either the chinook or coho salmon quota. The overall treaty Indian ocean quotas are 32,000 chinook and 77,000 coho salmon. Inseason adjustments to the season were imposed by treaty Indian tribal regulations.

Based on the best available information, the treaty Indian ocean fishery was projected to reach the overall quota of 77,000 coho salmon by midnight, September 5, 1989. Therefore, the treaty Indian ocean salmon fishery

between the U.S.-Canada border and Point Chehalis (46°53'18" N. latitude) was closed to further fishing effective 2400 hours local time, September 5, 1989. Actual notice to affected treaty Indian fishermen of this closure was provided by the treaty tribes and by tribal regulations.

The 1989 commercial fishery for all salmon species in the subarea from the Red Buoy Line to Cape Falcon, Oregon, commenced on August 21, then closed as regularly scheduled for two days on August 22–23. When the fishery reopened on August 24, the northern boundary was moved northward to Leadbetter Point, Washington. This fishery was scheduled to continue through the earliest of October 31 or the attainment of a chinook or coho salmon quota.

Based on the best available information, the commercial fishery catch in the subarea was projected to reach the overall 300,000 coho salmon quota for non-treaty troll and recreational ocean fisheries north of Cape Falcon, Oregon, by midnight, September 10, 1989. Therefore, the commercial fishery in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, was closed to further fishing effective 2400 hours local time, September 10, 1989.

The 1989 commercial fishery for all salmon species except coho salmon in the subarea from Sisters Rocks to Mack Arch, Oregon, commenced on September 1, and was scheduled to continue through the earlier of September 15 or the attainment of a subarea quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea was projected to reach the subarea quota of 7,500 chinook salmon by midnight, September 14, 1989. Therefore, the commercial fishery in this subarea was closed to further fishing effective 2400 hours local time, September 14, 1989.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and affected treaty Indian tribes regarding these closures. The States of Washington and Oregon will manage the commercial fisheries in state waters adjacent to the affected areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of the non-Indian closures was given prior to the times listed above by telephone hotline number (206) 525–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 20, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 1989.

David S. Crestin,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23896 Filed 10–5–89; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 661

[Docket No. 90515–9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment, reopening, and closure.

SUMMARY: NOAA announces adjustment to the ocean salmon management measures in the exclusive economic zone (EEZ) as follows: (1) For the commercial fishery in the subarea from the Red Buoy Line to Cape Falcon, Oregon, the northern boundary at the Red Buoy Line is moved northward to Leadbetter Point, Washington, Conservation Zone 1 (Columbia River mouth) is closed, and all salmon must be delivered in the area from Westport, Washington, to Cape Falcon, Oregon, beginning August 24, 1989; (2) for the commercial fishery in the revised subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, the ratio restriction is modified so that a single daily landing limit per vessel of 40 coho and 8 chinook is permitted, beginning August 29, 1989; and (3) the quota for coho salmon in the recreational fishery from the Queets River to Leadbetter Point, Washington, is decreased from 91,100 to 86,200 fish.

NOAA announces the closure of (1) the commercial fishery in the EEZ from the U.S.-Canada border to Carroll Island, Washington, at midnight, August 18, 1989, and (2) the recreational fishery in the EEZ from the Queets River, to Leadbetter Point, Washington, at midnight, August 30, 1989. NOAA also announces the reopening of (1) the commercial fishery in the EEZ from Humbug Mountain, Oregon, to Punta Gorda, California, beginning August 22, 1989, and (2) the recreational fishery in the EEZ from Cape Falcon to Orford Reef Red Buoy, Oregon, on September 2–4, 1989. The Director, Northwest Region, NMFS (Regional Director), has determined that this action is necessary to conform to the preseason notice of 1989 management measures. This action is intended to allow maximum harvest of ocean salmon quotas established for the 1989 season and to ensure conservation of coho salmon.

EFFECTIVE DATES: (1) 2400 hours local time, August 18, 1989, for the closure of the commercial fishery from the U.S.-Canada border to Carroll Island, Washington; (2) 0001 hours local time, August 22, 1989, for the reopening of the commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California; (3) 0001 hours local time, August 24, 1989, for the adjustment to the commercial fishery from the Red Buoy Line to Cape Falcon, Oregon, and the closure of Conservation Zone 1; (4) 0001 hours local time, August 29, 1989, for the adjustment to the commercial fishery from Leadbetter Point, Washintton, to Cape Falcon, Oregon, and for the revised quota in the recreational fishery from the Queets River to Leadbetter Point, Washington; (5) 2400 hours local time, August 30, 1989, for the closure of the recreational fishery from the Queets River to Leadbetter Point, Washington; and (6) 0001 hours local time, September 2, 1989, through 2400 hours local time, September 4, 1989, for the reopening of the recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). Public comments are invited until October 20, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way

NE., BIN C15700, Seattle, WA 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are published at 50 CFR part 661. Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). The following adjustments to the management measures are authorized by the ocean salmon regulations at 50 CFR 661.21(b)(1)(i)–(v).

Adjustment to Commercial Fishery From the Red Buoy Line to Cape Falcon, Oregon

The 1989 commercial fishery from the Red Buoy Line to Cape Falcon, Oregon, opened for one day on August 21, 1989, then closed as regularly scheduled for two days on August 22–23. Based on the best available information, the Regional Director determined that when the fishery reopened on August 24, commercial fishermen should be given additional opportunity to maximize the harvest of the chinook salmon quota. Therefore, the northern boundary of this fishery, the Red Buoy Line, was moved northward to Leadbetter Point, Washington. In accordance with this modification, Conservation Zone 1 at the Columbia River mouth was closed (defined in the preseason notice at 54 FR 19805, note C–3). Furthermore, the northern boundary for the landing requirement that "all salmon must be delivered in the area from Leadbetter Point to Cape Falcon" as announced in the preseason notice at 54 FR 19802 also was moved northward so that deliveries could be made at Westport, Washington. All modifications were effective 0001 hours local time, August 24, 1989.

Adjustment to Commercial Fishery From Leadbetter Point, Washington, to Cape Falcon, Oregon

Upon further evaluation of chinook salmon landings in the expanded commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon (revised above), the Regional Director determined that the landing ratio restriction (ratio of coho to chinook salmon which can be landed) should be liberalized for chinook salmon.

The preseason notice at 54 FR 19802 announced that "A single daily landing limit per vessel of 40 coho and 4 chinook is permitted." The best available information indicates that increasing the chinook portion of the ratio to 8 fish would provide fishermen additional opportunity to maximize the harvest of the allowable chinook quota. Therefore, effective 0001 hours local time, August 29, 1989, the landing restrictions for the commercial fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon, are as follows: "A single daily landing limit per vessel of 40 coho and 8 chinook is permitted. Chinook must be delivered with the coho and all salmon must be delivered in the area from Westport, Washington, to Cape Falcon, Oregon."

Adjustment to Recreational Fishery From the Queets River to Leadbetter Point, Washington

The 1989 recreational salmon fisheries from the U.S-Canada border to Cape Falcon, Oregon, are managed not to exceed an overall quota of 225,000 coho salmon. This overall quota is partitioned into three subarea quotas and seasons. Impacts from quota overages or underages from each fishing period or subarea are subtracted from or added to later fishing periods of the same user group or transferred between the recreational and commercial fisheries in accordance with the framework allocation.

The recreational fisheries for two subareas have been completed. According to the best available information, the fishery in the subarea from Leadbetter Point, Washington, to Cape Falcon Oregon, which closed on August 17, 1989 (54 FR 37110, September 7, 1989), exceeded its subarea coho quota by about 4,900 fish. The Salmon Technical Team analyzed the impacts from this quota overage to determine the amount to fish that should be subtracted from the subarea coho quota for the remaining open recreational fishery from the Queets River to Leadbetter Point, Washington. Accordingly, the subarea coho quota for the recreational fishery from the Queets River to Leadbetter Point, Washington, was decreased by 4,900 fish, from 91,100 to 86,200 coho salmon, effective 0001 hours local time, August 29, 1989.

Reopenings

Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(2) state that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is not less than 24 hours."

Reopening of Recreational Fishery From Humbug Mountain, Oregon, to Punta Gorda, California

The commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California, was closed at midnight, August 20, 1989, upon the projected attainment of a subarea quota of 9,200 chinook salmon (54 FR 37110, September 7, 1989). Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch.

According to the best available information, 1,000 chinook salmon were harvested by this fishery, leaving 8,200 fish unharvested in the subarea quota. This amount has been determined to be sufficient for reopening of the fishery beginning August 22, 1989.

This action was taken in as timely a manner as possible for all of the remaining original season which is scheduled to end on August 31, 1989. Reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea.

Reopening of Recreational Fishery From Cape Falcon to Orford Reef Red Buoy, Oregon

The recreational fishery from Cape Falcon to Orford Reef Red Buoy, Oregon, was closed at midnight, August 20, 1989, upon the projected attainment of an overall recreational quota of 285,000 coho salmon in the area from Cape Falcon to the U.S.-Mexico border (54 FR 37110, September 7, 1989). (The recreational fishery from Orford Reef Red Buoy, Oregon, to the U.S.-Mexico border remains open as regularly scheduled.) Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch.

According to the best available information, recreational catches of coho salmon south of Cape Falcon totaled 275,900 fish through August 27, 1989. An estimated 2,100 coho salmon are projected to be harvested in the recreational fishery south of Orford Reef Red Buoy, Oregon, during the remaining open period from August 28 through September 30, 1989. Therefore, 7,000 coho salmon remain unharvested in the overall recreational coho quota. This

amount has been determined to be sufficient for additional open period of three days in the subarea from Cape Falcon to Orford Reef Red Buoy, Oregon. Therefore, this fishery was reopened on September 2–4, 1989.

This action was taken in as timely a manner as possible for a part of the remaining original season which would be ended no later than September 15, 1989. Reopening of the recreational fishery in this subarea is consistent with the management objectives for coho salmon south of Cape Falcon, Oregon.

Closures

Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Closure of Commercial Fishery From the U.S.-Canada Border to Carroll Island, Washington

The 1989 commercial fishery for all salmon species in the subarea from the U.S.-Canada border to Carroll Island, Washington, commenced on August 7, 1989, and was scheduled to continue through the earliest of August 31, 1989, or the attainment of either a subarea quota of 40,000 coho salmon or an overall commercial quota of 47,500 chinook salmon north of Cape Falcon, Oregon.

As indicated in the preseason notice, the Fraser River Panel of the Pacific Salmon Commission maintained jurisdiction over the ocean commercial troll harvest of pink salmon during the 1989 fishing season. The Fraser River Panel promulgated regulations which superseded the preseason regulations between 48° N. lat. (approximately Carroll Island, Washington) and the U.S.-Canada border as follows. The fishery opened for 4 days from 0001 hours local time August 7, 1989, through 2400 hours local time August 10, 1989. The fishery was then reopened for 4 days from 0001 hours local time August 16, 1989, through 2400 hours local time August 19, 1989.

Based on the best available information, the commercial fishery catch in the subarea from the U.S.-Canada border to Carroll Island, Washington, was projected to reach the subarea quota of 40,000 coho salmon by midnight, August 18, 1989. Therefore, the fishery in this subarea ways closed to further fishing effective 2400 hours local time, August 18, 1989.

Closure of Recreational Fishery From the Queets River to Leadbetter Point, Washington

The 1989 recreational fishery for all salmon species in the subarea from the Queets River to Leadbetter Point, Washington, commenced on June 26, 1989, and was scheduled to continue through the earliest of September 28, 1989, or the attainment of either a subarea quota of 86,200 coho salmon (revised above) or an overall recreational quota of 47,500 chinook salmon north of Cape Falcon.

Based on the best available information, the recreational fishery catch in the subarea was projected to reach the revised 86,200 coho salmon quota by midnight, August 30, 1989. Therefore, the recreational fishery in this subarea was closed to further fishing effective 2400 hours local time, August 30, 1989.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, and the Fraser River Panel of the Pacific Salmon Commission regarding these inseason adjustments, reopenings, and closures. The states of Washington, Oregon, and California will manage the commercial and recreational fisheries in State waters adjacent to the affected areas of the EEZ in accordance with this federal action. This notice does not apply to other fisheries which may be operating in other areas.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to the times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through October 20, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 3, 1989.

David S. Crestin,

Acting Director of Office, Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23897 Filed 10–5–89; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

50 CFR Part 663

[Docket No. 81130–8265]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice modifying earlier restrictions to limit the levels of fishing in the groundfish fishery off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan. These actions (1) remove the overall poundage and trip frequency limits for the deepwater complex (sablefish, Dover sole, thornyheads, and arrowtooth flounder) taken with trawl gear and (2) relax the trip limit for sablefish caught with nontrawl gear, effective on October 4, 1989. These actions are necessary because neither the trawl quota, nontrawl quota nor optimum yield for sablefish has been reached, nor are they expected to be reached before the end of the year, and greater levels of harvest can be allowed.

DATES: Effective 0001 hours, local time, October 4, 1989 until modified, superseded, or rescinded. Comments will be accepted through October 20, 1989.

ADDRESSES: Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg 1, Seattle WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140 or Rodney R. McInnis at (213) 514–6202.

SUPPLEMENTARY INFORMATION: The following actions modify fishing

restrictions for sablefish that were established earlier in the year. These actions, in conjunction with the management measures imposed earlier in the year (at 54 FR 299, 54 FR 18658, and 54 FR 30046), are part of a management regime designed to prevent biological stress, to avoid exceeding gear quotas, to minimize discards, and to provide for equitable use of the sablefish resource by the trawl and nontrawl fleets.

According to current regulations, if a gear quota (trawl or nontrawl) is reached before the end of the year, all further landings of sablefish by that gear type must be prohibited for the rest of the year. If the 11,000 mt optimum yield quota (OY) for sablefish is reached before the end of the year, all further landings of sablefish by all gear types must be prohibited for the remainder of 1989.

Deepwater Complex (Including Sablefish)—Trawl Gear

At its April 1989 meeting, the Pacific Fishery Management Council (Council) recommended that the Secretary of Commerce (Secretary) impose trip poundage and frequency limits on landings of the deepwater complex (sablefish, Dover sole, thornyheads, and arrowtooth flounder) in order to conserve sablefish. It also recommended that the overall poundage and frequency limits on the deepwater complex be removed during the last quarter of the year if it is determined that the trawl quota or the OY for sablefish has not been reached or is not imminent. However, the separate trip limit for sablefish would remain in effect during the last quarter of the year. The Secretary published a notice of fishing restrictions on May 2, 1989 (54 FR 18658), which announced concurrence with the Council's recommendations including potential removal of the trip limits on the deepwater complex during the last quarter of the year. The effective date of October 4 was chosen because it is the first day following the last fishing week of the third quarter. No comments relevant to this issue were received during the fifteen day public comment period after publication of that notice.

The best available information on August 29, 1989 based on past and projected landings data, indicates that neither the trawl quota nor OY for sablefish has been reached and their achievement is not expected before the end of the year. Fifty-three percent of the 6,397 metric ton (mt) trawl sablefish quota and sixty-nine percent of the 11,000 mt OY for sablefish remained to be harvested as of August 12, 1989.

Therefore, on October 4, 1989, the poundage and frequency limits on the deepwater complex will be removed in accordance with the Council's recommendation. These limits restricted landings of the deepwater complex to one landing a week above 4,000 pounds, not to exceed 30,000 pounds, and provided for biweekly and twice-weekly trip limit options. As a result, the trip frequency limits for sablefish also are removed, and weekly, biweekly, and twice-weekly trip limits and notification procedures will no longer apply. However, the separate trip limit for sablefish in paragraph 4(a)(i) (1,000 pounds or 25 percent of the deepwater complex, whichever is greater, per vessel per fishing trip), and the sablefish size limit in paragraph 4(a)(iv) (which limits landings to no more than 5,000 pounds of sablefish smaller than 22 inches) published on May 2, 1989 (54 FR 18658), and all other provisions pertaining to sablefish caught with trawl gear that were announced in that notice, will remain in effect until modified, superseded, or rescinded. The states of Washington, Oregon, and California are implementing this action concurrently.

Secretarial Action: The Secretary concurs with the Council's recommendation, and has determined that neither the trawl quota not the OY for sablefish has been reached and is not expected to be reached before the end of the year. Consequently, the restrictions for trawl-caught sablefish at 54 FR 18658 (May 2, 1989) are replaced with the following:

(4) Trip and size limits.

(a) Trawl gear.

(i) No more than 1,000 pounds or 25 percent (by weight) of all legal fish on board in the deepwater complex (including sablefish), whichever is greater, may be taken and retained, possessed, or landed per vessel per fishing trip.

Note: Twenty-five percent of the deepwater complex (including sablefish) is equivalent to 33.333 percent of all legal fish on board in the deepwater complex other than sablefish.

(A) "Deepwater complex" means sablefish (*Anoplopoma fimbria*), Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus spp.*), and arrowtooth flounder (*Atheresthes stomias*).

(B) Percentages apply only to legal groundfish on board. Legal fish means groundfish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 663, the Magnuson Act, any notice issued under subpart B of part 663, or any other regulation or permit promulgated under the Magnuson Act.

(ii) Of those sablefish taken with trawl gear under paragraph 4(a)(i) above, no more than 5,000 pounds of sablefish smaller than 22 inches (total length) may be taken and retained, possessed, or landed per vessel per fishing trip.

Sablefish—Nontrawl Gear

As announced at 54 FR 18658 (May 2, 1989), the Secretary implemented a 100 pound trip limit for sablefish caught with nontrawl gear when it was projected that approximately 200 mt of the 4,581 mt nontrawl quota of sablefish was remaining, which occurred on July 17, 1989 (54 FR 30046, July 18, 1989). The purpose of the 100 pound trip limit was to eliminate target fishing for sablefish with nontrawl gear, thereby drastically slowing the fishery and providing sablefish for small fisheries that occur later in the year. According to current regulations, if the nontrawl quota is reached, all further landings of sablefish by that gear must be prohibited for the rest of the year.

At its September 20–21, 1989, meeting, the Council was advised by its Groundfish Management Team (GMT) that nontrawl landings of sablefish had been slowed considerably and that the nontrawl quota would not be reached in 1989 if current landing rates continued. The best available information on August 29, 1989, based on past and projected landings data, indicates that 389 mt of the nontrawl quota still remained as of August 12, 1989. The Council also heard testimony that the 100 pound trip limit did not adequately allow for incidental catches of sablefish taken in the longline fishery for rockfish and that, as a result, sablefish were being discarded.

Consequently, the Council recommended that the Secretary replace the 100 pound trip limit for nontrawl caught sablefish with a new trip limit of 2,000 pounds or 20 percent (by weight) of all groundfish on board, whichever is less, to be applied if more than 100 pounds of sablefish are on board. All weights are round weights or round weight equivalents. The trip limit does not apply if fewer than 100 pounds of sablefish are on board. In addition, there will continue to be no size limit for nontrawl caught sablefish.

Although landings may increase under this larger trip limit, the nontrawl quota is not expected to be reached before the end of the year. Targeting on sablefish will continue to be discouraged, and small nontrawl fisheries that operate later in the year will be allowed to land their small and often unavoidable catches of sablefish. Furthermore, the

new trip limit will minimize discards while enabling full utilization of the nontrawl quota.

Only the provisions announced in paragraph 4(b)(i) at 54 FR 30046 (July 18, 1989) are changed. All other provisions for sablefish caught with nontrawl gear announced in the notice at 54 FR 18658 (May 2, 1989), (except for the size limit at paragraph 4(b)(ii) which was removed by 54 FR 30046 (July 18, 1989)), including the provision for inseason adjustments and the application of this limit to other fisheries, remain in effect.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein revises the trip limit for sablefish caught with nontrawl gear at 54 FR 30046 (July 18, 1989) by replacing paragraph 4(b)(i) with the following:

(b) Nontrawl gear.

(i) No more than 2,000 pounds, or 20 percent (by weight) of all legal groundfish on board, whichever is less, may be taken and retained, possessed, or landed per vessel per fishing trip. This provision applies only when more than 100 pounds (round weight) of sablefish are onboard.

Other Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Landings of groundfish in the pink shrimp, spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and pink shrimp, spot or ridgeback prawns in the same fishing trip, the groundfish restrictions in this notice apply.

Classification

The determination to change these restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Director, Northwest Region (see Addresses) during business hours until the end of the comment period.

An Environmental Impact Statement (EIS) was prepared for the FMP in 1982 in accordance with the National Environmental Policy Act (NEPA). The alternative and environmental impacts of this notice are not significantly different than those considered in the EIS for the FMP. Therefore these actions are categorically excluded from the NEPA requirements to prepare an environmental assessment in accordance with paragraph 5a(3) of the NOAA Directives manual 02–10 because the alternatives and their impacts have not changed significantly.

These actions are taken under the authority of 50 CFR 663.22 and 663.23, and are in compliance with Executive Order 12291. These actions are not subject to the Regulatory Flexibility Act because there is no notice and comment period preceding the effective date of this notice. These actions do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Section 663.23 states that any notice issued under this section will not be effective until 30 days after publication in the **Federal Register**, unless the Secretary finds and publishes with the notice good cause for an earlier effective date. If the current restrictions on the deepwater complex fishery and the nontrawl fishery for sablefish are not relaxed, both the trawl and nontrawl sablefish quotas are not expected to be taken before the end of 1989. The lessening of these restrictions will not only allow the full utilization of the OY for sablefish, but it will reduce discards of unavoidably caught sablefish, and minimize disruption of multispecies fisheries involving sablefish. Consequently, further delay of these actions is impracticable and contrary to the public interest, and for good cause these actions are taken in final form effective October 4, 1989.

The public has had the opportunity to comment on these actions. The public participated in the Groundfish Select Group, Groundfish Management Team, and Council meetings in November 1988, April and September 1989 that generated the recommendation to remove the trip limit on the deepwater complex which was endorsed by the Council and the Secretary. A public comment period followed publication of the May 2, 1989, notice (54 FR 18658) announcing the intent to take this action, but no comments relevant to this action were received. The public also participated in the Groundfish Select Group and Council meetings in September 1989 during which the recommendation was made to relax the nontrawl trip limit for sablefish. Further public comments will be accepted for 15 days after date of filing with the Office of the **Federal Register**.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 1989.

David S. Crestin,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–23895 Filed 10–4–89; 4:59 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 51

[Docket No. FV-88-208]

Papayas; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would establish voluntary U.S. Standards for Grades of Papayas. The Papaya Administrative Committee, a group of Hawaiian papaya producers, has requested that standards be developed to provide a common trading language for this product. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATE: Comments must be postmarked or courier dated on or before December 11, 1989.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Michael J. Dietrich, at the above address or call (202) 447-2093.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non-major" under the critieria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et seq), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule for establishment of U.S. Standards for Grades of Papayas will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, application of the standards is voluntary, so members of the papaya industry need not have their product certified under these standards, thereby incurring no costs at all.

In April 1984, the Hawaii Board of Agriculture, on behalf of the Papaya Administrative Committee, made a formal request of the Agency's Fresh Products Branch to develop a U.S. Standard for Grades of Papayas. A market survey was drafted by the Fresh Products Branch and sent to industry personnel and other interested parties for comments in May of 1985. No industry comments were received and all activity concerning standards development was suspended.

Hawaii is the major commercial producer of papayas in the United States and the papaya industry is one of the largest and most rapidly growing sectors of Hawaiian agriculture. According to data from the Papaya Administrative Committee, papaya production for 1986-87 was 58.8 million pounds and for 1987-88 was 65.5 million pounds. Committee estimates for 1988-89 are 79.5 million pounds and for 1989-90, 93.0 million pounds. In addition, in recent years the import of papayas into the United States from foreign sources has been increasing. Accordingly, the papaya industry felt that the adoption of U.S. grade standards would give the industry a uniform basis for trading. Therefore in August 1988, the Papaya Administrative Committee made another request for the development of U.S. standards. The Department is authorized under the Agricultural Marketing Act of 1946 to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

The proposed standards will include three grades: U.S. Fancy, U.S. No. 1, and U.S. No. 2, with basic requirements listed for each. These include reference to variety, maturity, cleanliness, smoothness, soluble solids, and shape. In addition, the standards include provisions for: size, tolerances and their application, soluble solids requirements, classification of defects, and definitions.

Accordingly, it is proposed that U.S. Standards for Grades of Papayas be established and codified as 7 CFR 51.725 thru 51.732 and to read as follows:

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products. (Inspection, certification, and standards.)

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. By adding a new subpart, Subpart—United States Standards for Grades of Papayas to read as follows:

Subpart—United States Standards for Grades of Papayas

Sec.

Subpart—United States Standards for Grades of Papayas

§ 51.725 General.

Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

§ 51.726 Grades.

(a) "U.S. Fancy" consists of papayas which meet the following requirements:

(1) Basic Requirements:

(i) Similar varietal characteristics;

(ii) Mature, but not overripe, soft, or shriveled;

(iii) Clean;

(iv) Well formed;

(v) Smooth; and,

(vi) Meets soluble solids requirements, unless otherwise specified. (See § 51.730).

(2) Free from:

(i) Decay;

(ii) Internal hard spots;

(iii) Scalding;

(iv) Cuts or punctures;

(v) Catfaces; and,

(vi) Cercospora spots.

(3) Free from injury by:

(i) Scars;

(ii) Bruises;

(iii) Disease;

(iv) Insects; and,

(v) Mechanical or other means.

(4) Tolerances. (See § 51.728)

(b) "U.S. No. 1" consists of papayas which meet the following requirements:

(1) Basic Requirements;

(i Similar varietal characteristics;

(ii) Mature, but not overripe, soft, or shriveled;

(iii) Clean;

(iv) Fairly well formed;

(v) Fairly smooth; and,

(vi) Meets soluble solids requirements, unless otherwise specified. (See § 51.730)

(2) Free from:

(i) Decay;

(ii) Internal hard spots;

(iii) Fresh cuts or punctures.

(3) Free from damage by:

(i) Scars;

(ii) Bruises;

(iii) Disease;

(iv) Insects;

(v) Catfaces;

(vi) Scalding;

(vii) Healed cuts or punctures;

(viii) Cercospora spots; and,

(ix) Mechanical or other means.

(4) Tolerances. (See § 51.728)

(c) "U.S. No. 2" consists of papayas which meet the following requirements:

(1) Basic Requirements:

(i) Similar varietal characteristics;

(ii) Mature, but not overripe, soft, or shriveled;

(iii) Fairly clean;

(iv) Not badly misshapen;

(v) Not excessively rough; and,

(vi) Meets soluble solids requirements, unless otherwise specified. (See § 51.730)

(2) Free from:

(i) Decay;

(ii) Fresh cuts or punctures; and,

(iii) Internal hard spots.

(3) Free from serious damage by:

(i) Scars;

(ii) Bruises;

(iii) Disease;

(iv) Insects;

(v) Catfaces;

(vi) Scalding;

(vii) Healed cuts or punctures;

(viii) Cercospora spots; and,

(ix) Mechanical or other means.

(4) Tolerances. (See § 51.728)

§ 51.727 Size.

(1) Papayas packed in any container shall be fairly uniform in size.

(2) "Fairly uniform in size" means the difference in weight between the largest and the smallest papaya in any container does not exceed 8 ounces.

(3) In order to allow for variations incident to proper packing, based on sample inspection, up to, but not more than 5 percent of the containers in any lot may fail to meet the size requirement.

§ 51.728 Tolerances.

Based on sample inspection, in order to allow for variations incident to proper grading and handling in the foregoing grades, the following tolerances, by count, are provided:

(a) *U.S. Fancy.* (1) For defects. Not more than 10 percent of the papayas in any lot may fail to meet the grade requirements: Provided, that included in this amount for more than 5 percent shall be allowed for serious damage, including in this latter amount not more than 1 percent for fruit affected by decay at shipping point and an additional 1 percent, or a total of not more than 2 percent, shall be allowed for papayas affected by decay en route or at destination.

(b) *U.S. No. 1.* (1) For defects. Not more than 10 percent of the papayas in any lot may fail to meet the grade requirements: Provided, that included in this amount not more than 5 percent shall be allowed for serious damage, including in this latter amount not more than 1 percent for fruit affected by decay at shipping point and an additional 1 percent, or a total of not more than 2 percent, shall be allowed for papayas affected by decay en route or at destination.

(c) *U.S. No. 2.* (1) For defects. Not more than 10 percent of the papayas in any lot may fail to meet the grade requirements: Provided, that included in this amount not more than 1 percent shall be allowed for fruit affected by decay at shipping point and an additional 1 percent, or a total of 2 percent, shall be allowed for papayas affected by decay en route or at destination.

§ 51.729 Application of tolerances.

The contents of individual containers in a lot, based on sample inspection, are subject to the following limitations:

(a) Individual samples shall not have more than double any specified tolerance except that at least two defective specimens may be permitted in any container: Provided, that the averages for the entire lot are within the tolerances specified for the grade.

§ 51.730 Soluble solids requirements.

(a) The soluble solids for any lot of papayas, unless otherwise specified, shall average not less than 10 percent. Soluble solids shall be determined by an approved temperature compensating hand refractometer using the combined juice extraced from the edible portion of 8 papayas chosen at random.

§ 51.731 Definitions.

"Similar varietal characteristics" means that the papayas are similar in shape, size, and color of flesh.

"Mature" means the papaya has reached the stage of development which will ensure completion of the ripening process. This is characterized by a tinge of yellow color on the blossom end of the fruit.

"Overripe" means dead ripe with soft flesh, and past commercial use.

"Clean" means practically free from dirt, dust, spray residue, staining, latex or other foreign material.

"Fairly clean" means reasonably free from dirt, dust, spray residue, staining, latex or other foreign material.

"Well formed" means the papaya is not lopsided or elongated and that the sides are not noticeably flattened.

"Fairly well formed" means the papaya may be moderately lopsided, flattened, elongated or otherwise lacking symmetry, but the fruit shall not be sufficiently misshapen to materially detract from its appearance.

"Not badly misshapen" means the papaya is more than moderately lopsided, flattened, or elongated but not to the extent that its appearance is seriously affected.

"Catfaces" means structural deformities of the papaya characterized by a scar, usually sunken, which extends downward from the stem on one side of the fruit and causes slight to serious malformation.

"Scalding" means the injury characteristic of exposure to extreme temperatures or chemical injury.

"Internal hard spots" means hard tissue masses in the flesh of the papaya.

"Cercospora spots" means spots which are black and usually raised, with corky tissue beneath in latter stages. This is not scored as decay.

"Injury" means any defect described in § 51.732 or an equally objectionable variation of any one of these defects, any other defects, or any combination of defects which more than slightly detracts from the appearance, or the edible or marketing quality of the fruit.

"Damage" means any defect described in § 51.732 or an equally objectionable variation of any one of these defects, any other defects, or any combination of defects which materially detracts from the appearance, or the edible or marketing quality of the fruit.

"Serious damage" means any defect described in § 51.732 or an equally objectionable variation of any one of these defects, any other defects, or any combination of defects which seriously detracts from the appearance, or the edible or marketing quality of the fruit.

§ 51.732 Classification of defects.

Factor	Injury[1]	Damage[1]	Serious damage [1]
Bruises	When affecting an aggregate area more than ½ inch in diameter.	When affecting an aggregate more than 1½ inches in diameter.	When affecting an aggregate area more than 2½ inches in diameter with the underlying flesh discolored and/or soft to the depth of ½ inch or more.
Scars	When deep, scaly and cracked, or not smooth and aggregating an area more than ½ inch in diameter, or smooth and aggregating an area more than 1 inch in diameter.	When deep and aggregating an area more than ¾ inch in diameter; or scaly, cracked, or not smooth and aggregating an area exceeding 5 percent of fruit surface; or smooth and aggregating an area exceeding 10 percent of fruit surface.	When deep and aggregating an area of more than 5 percent of fruit surface; cracked or not smooth and aggregating an area more than 10 percent of fruit surface; or smooth and aggregating an area more than 20 percent of fruit surface.
Catfaces	Any amount.	When any catface is more than 1 inch in length, or depressed or rought..	When extending more than ½ the length of the fruit or excessively deep, wide, or rough
Healed cuts or punctures.		When one is conspicuous and exceeds ⅛ inch in depth and ¾ inch in length, or so numerous and conspicuous as to materially affect appearance..	When one is conspicuous and exceeds 1 3/16 inch in depth and 1½ inch in length, or so numerous and conspicuous as to seriously affect appearance.
Cercospora spots.		When more than 5 are present	When more than 7 are present.

[1] Defect Classifications are based on a 1 pound or size 10 papaya. Smaller or larger fruit shall be allowed proportionately less or more area affected relative to their size.

Dated: September 29, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-23928 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 51

[Docket No. FV-88-204]

Snap Beans; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; modified.

SUMMARY: This action is a modification of the proposed rule published in the Federal Register on March 8, 1989. This action would revise the voluntary U.S. Standards for Grades of Snap Beans. The South Florida Vegetable Exchange (the Exchange), which represents the majority of snap bean growers in South Florida, has requested the standards be revised to bring them into conformity with current cultural and harvesting practices. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging in order to encourage uniformity and consistency in commercial practices.

DATE: Comments must be postmarked or courier dated on or before December 11, 1989.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page numbers of this issue of the **Federal Register** and will be made available for public inspection in the above office during business hours.

FOR FURTHER INFORMATION CONTACT: Paul W. Manol at the above address, or call (202) 447-5410.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "non-major" under the criteria therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed revision of the standards for snap beans will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

The United States Standards for Grades of Snap Beans were last revised on August 1, 1936. A previous proposal to revise the U.S. Standards for Grades of Snap Beans (7 CFR 51.3830-51.3844) was published in the **Federal Register** on March 8, 1989 (54 FR 9824-9825), and invited interested persons to submit written comments.

The proposal was developed at the request of the South Florida Vegetable Exchange, which represents the majority of snap bean growes in South Florida. It was their contention that the revisions were necessary to reflect current cultural and marketing practices.

The original 60-day comment period ended May 8, 1989, and a total of 36 comments were received concerning the proposal.

Twenty-four comments were in favor of the proposal. These comments were from growers and shippers of snap and pole beans in Florida. Seven of these comments were identical.

Six comments received were opposed to any changes in the current standard. These comments were from growers, shippers, and retailers of snap beans, all in States other than Florida. Their opposition was mainly directed at the proposed increase in the tolerances which would allow more broken beans in both the U.S. No. 1 and U.S. No. 2 grades. Their suggestions include either slowing mechanical harvesters down whereby fewer beans would break or devising new machinery that could handle the increased speed of harvesting.

Six comments received were generally in favor of the proposed revisions, but suggested minor changes for the sake of

clarity. All of these comments were from Federal-State Inspection Supervisors.

The Agricultural Marketing Service, in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, grade, and packaging in order to encourage uniformity and consistency in commercial practices. The standards have been reviewed for need, currentness, clarity, and effectiveness as part of a periodic review.

The Agency has decided to modify the proposed rule to clarify any misunderstood issues contained in the first proposal by establishing definitions for damage and serious damage by broken beans. It is the intent of this modified proposed rule to alleviate any misunderstanding among industry and other interested persons as to what actually constitutes damage and serious damage by broken beans. The Agency believes that the proposal of higher tolerances for broken beans in the U.S. No. 1 and U.S. No. 2 grades, as originally proposed, without a further definition for what actually constitutes damage and serious damage by broken beans, has led to some confusion and therefore opposition within the industry.

Those revisions originally requested by the Exchange, with minor nonsubstantive changes made for clarity, i.e. adding the term "damage" to the U.S. No. 1 grade, are proposed herein:

First, a general section would be added specifying the types of beans covered by the standard. Although the current standards apply to snap, pole and wax beans, according to the Exchange there exists some confusion in the industry as to what types of beans may be certified by the U.S. Standards for Grades of Snap Beans.

Next, the U.S. Combination and Unclassified grades would be eliminated because they are rarely used and may create some confusion in the marketplace.

With the majority of beans now being mechanically harvested rather than handpicked, the Exchange indicated that the industry is finding that with the newer, more tender varieties of beans, it is increasingly difficult to meet the requirements of the grade due to the higher percentages of broken beans in any lot resulting from the harvesting process. The current standards for U.S. Fancy and U.S. No. 1 grades allow ten percent total defects, including not more than 5 percent serious damage, including therein not more than 1 percent soft rot. For the U.S. No. 2 grade, ten percent total defects are allowed including not more than 1 percent soft rot. The new standards as originally proposed would provide for the following:

(a) *U.S. Fancy:* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No. 1:* Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent damage by grade defects other than damage by broken beans, including not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No. 2:* Fifteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent serious damage by grade defects other than serious damage by broken beans, including therein, not more than 1 percent for beans affected by soft rot.

Therefore, the proposal would lessen the restriction for broken beans only in the U.S. No. 1 and U.S. No. 2 grades, while further restricting the percentage of broken beans allowed in the U.S. Fancy grade. This further restriction would allow growers who "hand-pick" beans to market their product under a grade that reflects the quality difference due to harvesting and packing techniques.

Currently, the maximum tolerance for defects permitted in any grade is ten percent and individual packages may contain up to one and one-half times this amount. The proposal would allow maximum defects of thirteen percent and fifteen percent in the U.S. No. 1 and U.S. No. 2 grades respectively. Therefore, it would be necessary to revise the application of tolerances whereby individual packages may contain up to one and one-half times the thirteen percent tolerance or the fifteen percent tolerance, provided that the average for the entire lot averages within the maximum tolerance specified for the grade. Thus, paragraph (a) of § 51.3836, Application of tolerance, would be revised to read as follows: For tolerances of ten percent or more, individual packages may contain not more than one and one-half times the tolerance specified. Provided, that the average for the entire lot is within the tolerance specified for the grade.

Finally, the original proposal provided that the definition for "Similar Varietal Characteristics" be updated and simplified. The current definition references specific varieties that are not among those that are being widely grown. In addition, since varieties change in popularity over time, the Exchange stated that a revised definition should provide that beans of different colors or types shall not be mixed within the same container.

In addition to the changes originally proposed, this modified proposal also would establish definitions as to what constitutes damage and serious damage by broken beans. The current standard does not reference this defect. There has been confusion and disagreement within the industry on what a "broken bean" truly is and how much of a break should be allowed before a bean is considered defective by this factor. This modified proposal attempts to alleviate this confusion by providing in the definitions when broken beans will be considered as damaged or seriously damaged. In addition to those defects already referenced under § 51.3841 Damage, it is proposed that a broken snap bean shall be considered as damage when (a) There is one break present in the thick portion of the bean or one break at each end in the thin portion of the bean; (b) Any break that is materially affected by dirt or discoloration; (c) Any break that is ragged and materially detracts from the appearance; or (d) Unless otherwise specified, the remaining portion of the bean is less than 3½ inches in length (5½ inches for pole type beans).

Furthermore, under § 51.3844 Serious Damage, it is proposed that a broken snap bean shall be considered as serious damage when (a) There is a break on each end in the thick portion of the bean; (b) Any break is seriously affected by dirt or discoloration; (c) Any break that is ragged and seriously detracts from the appearance, or exposes a seed; or (d) Unless otherwise specified, the remaining portion of the bean is less than 3 inches in length (5 inches for pole type beans).

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that the subpart—United States Standards for Grades of Snap Beans, 7 CFR part 51, be amended as follows:

1. The authority citation of 7 CFR part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. In subpart—United States Standards for Grades of Snap Beans, Section 51.3829 is added to read as follows:

§ 51.3829 General.

These standards can be applied to all beans used in their entirety rather than shelled beans, and includes types such as snap, pole, and wax beans. These standards do not apply to types such as fava, Lima, pinto or calico beans.

§§ 51.3832 and 51.3834 [Removed and Reserved]

3. Sections 51.3832 and 51.3834 are removed and reserved.

4. Paragraphs (a), (b), and (c) of § 51.3835 are revised to read as follows:

§ 51.3835 Tolerances.

* * * * *

(a) *U.S. Fancy.* Ten percent for beans in any lot which fail to meet the requirements of the grade, including not more than 3 percent damage by broken beans. Additionally, within the ten percent tolerance, not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(b) *U.S. No. 1.* Thirteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent damage by grade defects other than damage by broken beans, including not more than 5 percent shall be allowed for defects causing serious damage, including therein, not more than 1 percent for beans affected by soft rot.

(c) *U.S. No. 2.* Fifteen percent for beans in any lot which fail to meet the requirements of the grade, including not more than ten percent serious damage by grade defects other than serious damage by broken beans, including therein, not more than 1 percent for beans affected by soft rot.

5. Paragraph (a) of § 51.3836 is revised to read as follows:

§ 51.3836 Application of tolerances.

* * * * *

(a) For tolerances of ten percent or more, individual packages may contain not more than one and one-half times the tolerances specified: Provided, that the average for the entire lot is within the tolerance specified for the grade.

* * * * *

6. Section 51.3837 is revised to read as follows:

§ 51.3837 Similar varietal characteristics.

"Similar varietal characteristics" means that the beans are of the same color and general type. For example, wax and green beans, or Snap and Pole beans may not be mixed.

7. Section 51.3841 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 51.3841 Damage.

* * * * *

(b) Broken beans shall be considered as damage when:

(1) There is one break present in the thick portion of the bean or one break at each end in the thin portion of the bean;

(2) Any break that is materially affected by dirt or discoloration;

(3) Any break that is ragged and materially detracts from the appearance; or

(4) Unless otherwise specified, the remaining portion of the bean is less than 3½ inches in length (5½ inches for pole type beans).

8. Section 51.3844 is amended by designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 51.3844 Serious damage.

* * * * *

(b) Broken beans shall be considered as serious damage when:

(1) There is a break on each end in the thick portion of the bean;

(2) Any break is seriously affected by dirt or discoloration;

(3) Any break is ragged and seriously detracts from the appearance or exposes a seed; or

(4) Unless otherwise specified, the remaining portion of the bean is less than 3 inches in length (5 inches for pole type beans).

Dated: September 26, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-23929 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 968

[Docket No. AO F&V 88-1; FV-88-110]

Seedless European Cucumbers Grown in the United States; Recommended Decision and Opportunity to File Written Exceptions to Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes a marketing agreement and order regulating the handling of seedless European cucumbers, more commonly known as "greenhouse cucumbers", grown in the United States of America. The order would authorize the establishment of grade, size, quality, maturity, container and pack regulations to promote the quality and standardize the pack of greenhouse cucumbers shipped to fresh markets. In addition, it would authorize production research and marketing research and development activities to improve production practices, reduce costs and increase the consumption of greenhouse cucumbers. Consumers would benefit by being provided with a reliable supply of good quality product, and producers and handlers would benefit from the resulting consumer confidence and increased acceptance and sales of the product. The program would be administered by an eleven member committee consisting of seven producers, three handlers and a public member, and would be financed by assessments levied on greenhouse cucumber handlers.

DATE: Written exceptions to this recommended decision must be received by November 13, 1989.

ADDRESS: Four copies of written exceptions should be sent to the Hearing Clerk, United States Department of Agriculture, Room 1079, South Building, Washington, DC 20250-9200. All written exceptions will be available for public inspection at the office of the Hearing Clerk during regular business hours [7 CFR 1.27(b)].

FOR FURTHER INFORMATION CONTACT: Virginia Olson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 475-3930.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued June 22, 1988, and published in the **Federal Register** on June 27, 1988 [53 FR 24070].

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of greenhouse cucumbers grown in the fifty States of the United States of America and the District of Columbia, hereinafter referred to as the proposed order. This

notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR part 900].

The proposed order was formulated on the record of a public hearing held in Sacramento, California, on July 26–28, 1988. Notice of the hearing was published in the June 27, 1988, issue of the Federal Register. The notice set forth a proposed order submitted by the American Greenhouse Vegetable Growers Association (AGVGA) which represents a sizable portion of the greenhouse cucumber industry. At the hearing, a number of witnesses, including producers, handlers, a scientific researcher, a consumer, and an economist, testified in support of the order. Proponents emphasized that greenhouse cucumber producers need a marketing order if they are to continue to operate viable businesses and expand markets. They offered evidence in support of their position.

In general, witnesses testified that a marketing order for greenhouse cucumbers that allows the establishment of grade, size, quality, maturity, container, and pack regulations would improve the quality and standardize the pack of greenhouse cucumbers in the marketplace. The proposed order would enable the establishment of programs and projects relating to production and marketing research, consumer education, promotion, and market development which could result in reduced costs and increased sales.

In addition, one brief was filed by George H. Soares on behalf of the AGVGA. The brief in general reaffirmed the testimony presented at the hearing in support of the proposed marketing order with regard to such issues as: (1) Industry support for the proposed order; (2) the basis used in formulating the proposed production area; (3) eligibility requirements for producers; (4) the impact of the proposed order on small entities; and (5) the most appropriate method for assessing greenhouse cucumbers. Also, the brief included several proposed amendments to the order, which are discussed herein, as appropriate.

Small Business Consideration: In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et. seq.*], the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders issued pursuant to the Act, and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small business entities. Interested persons were invited to present evidence at the hearing on the reporting requirements and probable economic impact that the proposed order would have on small businesses.

The record indicates that there are approximately 250 handlers of greenhouse cucumbers in the United States, with all but about 20 also in the business of growing greenhouse cucumbers. During the 1987–88 season, U.S. production of greenhouse cucumbers was estimated to be about 38 million pounds, or the equivalent of 2.4 million 16-pound boxes. Testimony indicates that in recent seasons, f.o.b. prices have averaged about $8.00 per box, which would yield a total value of about $19 million. While there is a great variance in size of individual handler operations, the record indicates that most of the handlers that would be regulated under the proposed order would qualify as small firms under SBA's definition.

The record also indicates that there are between 250 and 300 greenhouse cucumber producers in the United States. The largest greenhouse cucumber producer has 22-acres of growing area, but all others operate substantially smaller greenhouses. The record indicates that the average size of a greenhouse cucumber growing operation is about 18,500 square feet or four-tenths of an acre. With gross annual receipts of $175,000 to $250,000 per acre, the record indicates that the vast majority of these producers could be classified as small businesses.

Witnesses testified that because most greenhouse cucumber producers and handlers are small businesses, a marketing order program is necessary to provide a means for these entities to pool their resources and work together to solve common problems. Witnesses testified that such action is necessary for the greenhouse cucumber industry to provide a uniform, quality product to consumers and expand markets.

The proposed order would authorize a number of requirements that may be imposed upon handlers. Principal requirements which could impact handlers include: standardized container and pack specifications; minimum standards of quality and size; mandatory inspection; payment of assessments; and associated reporting and recordkeeping.

Container and pack specifications could be used to limit the types of containers which may be used by handlers to ship greenhouse cucumbers, and how those greenhouse cucumbers must be packed. Quality and size restrictions could be established to remove from fresh market channels less desirable grades and sizes of greenhouse cucumbers. The establishment of these types of regulations would likely require the mandatory inspection of greenhouse cucumbers destined for fresh market with costs paid by handlers. The potential impacts of these requirements are discussed in detail elsewhere in this decision. In summary, the record evidence indicates that in any consideration of regulatory requirements, the committee should give due consideration to the impacts those requirements would have on small businesses and report the expected impacts to the Secretary and the industry. In the event it is deemed necessary to provide relief from certain requirements, the proposed order authorizes a number of exemptions. For example, provision has been made to allow small quantities of greenhouse cucumbers to be marketed without regard to the regulatory requirements that may be in effect. Additionally, waivers from the inspection requirement could be obtained when it was determined that inspection would not be practicable.

The order would be administered by a committee of greenhouse cucumber growers and handlers, and all recommendations for handling requirements would require the review and approval of the Secretary. The burden of these regulatory requirements should not be significant compared to the benefits which should accrue to the regulated businesses. For example, it was testified that uniform pack and container requirements should result in cost savings and reduced confusion on the part of buyers. If lower quality and

smaller sizes were eliminated from fresh market channels, demand for higher quality and preferred sizes should increase.

The program would be financed by assessments paid by greenhouse cucumber handlers. While the assessment rate that may be levied is not specified in the proposed order, it would have to be established at a rate sufficient to generate adequate revenue to cover the operating costs of a national program such as that proposed herein. Expenses would include committee staff salaries and travel expenses for committee members and staff, as well as other administrative expenses relating to establishing and equipping an office such as rent, utilities, postage and office equipment. Additionally, assessment funds would be used to fund any production research projects and promotion activities undertaken by the committee and to establish and maintain an effective program for assuring compliance with program requirements.

While the rate of assessment is not specified in the proposed order, testimony indicates that an assessment in the range of .5 to 1.5 cents per greenhouse cucumber may be an appropriate and acceptable amount to accomplish the purposes of the order. At these rates, the estimated 38 million pounds of greenhouse cucumbers produced in 1987–88 would have generated total assessment income of $190,000 to $570,000. With wholesale prices averaging about 50 cents per greenhouse cucumber (or approximately 50 cents per pound) nationwide, handlers testified that a .5 to 1.5 cent assessment would not be burdensome and would not represent a significant financial burden on handler operations. Further, the benefits of reduced costs and increased sales that would result from the contemplated research and promotion programs should outweigh assessment costs.

Handlers testified that the recordkeeping and reporting requirements that may be imposed under the proposed order would not be a burden on their businesses because they already maintain the necessary types of records, or could easily compile them from current records used in the normal operation of their businesses. The reporting and recordkeeping requirements that may be established under the proposed order are likely to be comparable to those issued under similar marketing order programs, which are not considered burdensome on handlers regulated under those orders. Therefore, the reporting and recordkeeping requirements would not be expected to impose any significant additional costs on handlers.

The terms of the proposed order should be administered in an efficient and economical manner in order to effectuate the declared policy of the Act. All entities, small and large, should be subject to minimal regulatory requirements as a result of the proposed order.

In determining that the proposed order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to minimize any unnecessary costs or other requirements on handlers. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the program under the proposed order would help to increase demand for greenhouse cucumbers. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike. Accordingly, it is determined that the provisions of the proposed order would not have a significant impact on small handlers or producers.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35], the reporting and recordkeeping provisions that may be imposed by the proposed order would be submitted to the Office of Management and Budget (OMB) for review. They would not become effective prior to OMB approval. Any requirements imposed would be evaluated against potential benefits to be derived, and any added burden resulting from increased reporting or recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable marketing order programs impose an average annual burden on each regulated handler of about one hour. It is reasonable to expect that a comparable burden may be imposed under this proposed order on the estimated 250 handlers of greenhouse cucumbers.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they approve the order. The ballot material that would be used in conducting any referendum on this proposed marketing order has been submitted to and approved by OMB (OMB No. 0581–0161). It has been estimated that it would take an average of 10 minutes for each of the approximately 250 greenhouse cucumber producers to participate in a voluntary referendum balloting. Additionally, it has been estimated that it would take approximately 5 minutes for each of the 250 greenhouse cucumber handlers to complete the proposed marketing agreement. And finally, should the order be approved, it has been estimated that it would take approximately 10 minutes for each of the 22 committee member nominees to complete a background statement to ascertain their eligibility to serve on the Cucumber Administrative Committee.

In accordance with Executive Order 12612, consideration has been given as to whether the proposed order would have substantial direct effects on the 50 United States of America, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. To this end, notice of the hearing conducted to consider the establishment of a Federal marketing order program for greenhouse cucumbers grown in the United States was provided to all governors, as well as to the Mayor of the District of Columbia, and to the Commissioners of Agriculture of all 50 States. No evidence was received indicating that the proposed order would create any burdens, financial or otherwise, on any of the States or the District of Columbia. Further, the proposed order would cover all greenhouse cucumbers grown in the U.S. Thus, any marketing orders, or their equivalent, authorized under State statutes could not achieve the same results as an alternative to a Federal marketing order program. It is therefore determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Material Issues

The material issues presented on the record of the hearing are as follows:

1. Whether the handling of greenhouse cucumbers grown in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which will tend to effectuate the declared policy of the Act;

3. What the specific terms and provisions of the proposed order should be including:

(a) The definition of terms used therein which are necessary to attain the objectives of the order and the Act;

(b) The establishment, composition, maintenance, powers and duties of a committee which shall be the administrative agency for assisting the Secretary in the administration of the marketing order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish, or provide for the establishment of, production and marketing research and market development projects;

(e) The method of regulating the handling of greenhouse cucumbers grown in the production area;

(f) The authority for inspection and certification of shipments;

(g) The establishment of requirements for handler reporting and recordkeeping;

(h) The requirement of compliance with all provisions of the proposed order and with regulations issued under it; and

(i) Additional terms and conditions as set forth in §§ 968.82 through 968.91 of the Notice of Hearing published in the **Federal Register** of June 27, 1988 [53 FR 24070] which are common to all marketing agreements and marketing orders, and other terms and conditions published as §§ 968.97 through 968.99 which are common to marketing agreements only.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

1. The Handling of Greenhouse Cucumbers is in the Current of Interstate or Foreign Commerce or Directly Burdens, Obstructs or Affects Such Commerce

The record evidence indicates that approximately 38 million pounds of greenhouse cucumbers were produced in the United States in 1987–88. These cucumbers, which are grown in greenhouses, are known to be commercially produced in at least 30 States. California, Florida and Ohio are the top three greenhouse cucumber producing States, with about 77 percent of the total national production. The remaining 23 percent is grown in geographic locations dispersed throughout the country, mostly near major population centers. Because these cucumbers are grown in greenhouses, they can be grown in any of the 50 States and in the District of Columbia.

The record indicates that greenhouse cucumbers are marketed not only within the State where grown, but also outside that State. Greenhouse cucumber shipments frequently move from one State to another, and sometimes are transported across the entire United States. For example, witnesses representing handlers from California, Ohio and Florida all indicated that they sold greenhouse cucumbers in the New York City market. Additionally, a Colorado handler testified that he shipped greenhouse cucumbers to markets in California, Texas and Illinois. A small volume of greenhouse cucumbers is exported to eastern and western Canada during Canada's low production periods.

Testimony indicates that although greenhouse cucumbers are produced twelve months of the year, production levels vary from month to month, depending on the geographic location of the greenhouse, climate, and anticipated availability of competing commodities. Almost all shipments are destined for fresh market sales and few, if any, are intended for processing. Greenhouse cucumbers are transported primarily by truck to local markets and to major cities across the United States. Air transport is seldom used, due primarily to cost considerations. The record evidence indicates that greenhouse cucumbers lose their identity once they leave their point of origin, and in the marketplace consumers cannot distinguish between a greenhouse cucumber produced in one area and one produced in another area.

Witnessed testified that greenhouse cucumbers are imported primarily from Canada, although imported supplies are also available from the Netherlands, Spain, Honduras, Colombia, Costa Rica, the Canary Islands and Mexico. These imported greenhouse cucumbers compete directly in the same markets with available domestic supplies.

Testimony indicates that when low prices are received in one market, prices and sales at other markets throughout the U.S. are affected. This is particularly noticeable when one seller offers fruit at less than the prevailing market prices. When this occurs, the effect may be to depress market prices elsewhere. Witnesses indicated that, in general, price changes are known by most buyers, and often immediately affect prices in other markets, which is indicative of the very competitive wholesale market for greenhouse cucumbers.

The record evidence shows that the handling of greenhouse cucumbers in any one market exerts an influence on the handling of such greenhouse cucumbers in all other markets. As with other commodities, sellers of greenhouse cucumbers conduct their businesses so as to obtain maximum returns for the product they have for sale. Shippers and other sellers such as brokers, commission agents, and wholesalers therefore continually survey all accessible markets so that they may take advantage of the best possible prices available. Further, they constantly attempt to develop demand and seek new markets for their product, and all markets provide an opportunity for individual sellers to increase sales. Likewise, greenhouse cucumber buyers consider prices and availability of greenhouse cucumbers from all sources in making their purchasing decisions. For this reason, greenhouse cucumber supplies and prices in any one location are promptly known elsewhere and have a direct effect on supplies and prices in all other locations.

Therefore, it is hereby found that all handling of greenhouse cucumbers grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, all handling of greenhouse cucumbers grown in the production area should be covered by the proposed order.

2. Economic and Marketing Conditions Justify a Need for a Federal Marketing Order

The record indicates that greenhouse cucumbers originated in Holland where they are grown and consumed extensively. Witnesses testified that the seedless European cucumber was brought to the North American continent after World War II by Dutch immigrants. A large majority of these immigrants settled in the Canadian provinces of Ontario, Alberta, and British Columbia. The Canadian government imported specialists from England and Holland to assist its own greenhouse vegetable growers in the culture of greenhouse cucumbers.

Testimony indicates that commercial production of greenhouse cucumbers in the United States began more than 40 years ago, in northern States such as Ohio. Commercial production of greenhouse cucumbers in California, now the leading domestic producing State, began in the late 1960's. Historic production and price information is limited, since no known private or public entity in the U.S. collected such data in the past. However, witnesses indicated that production of and prices for greenhouse cucumbers rose steadily from about 1975 to 1986. Acreage and production increased about 10 percent in 1986–87, but declined slightly in 1987–88.

In 1987–88, the three major producing States were California, Florida, and Ohio. There were about 40 acres of greenhouse cucumbers in California, 35 acres in Florida and 20 acres in Ohio. These States combined represented 95 acres of an approximate U.S. total of 120 acres. Thus, these three States accounted for about 80 percent of the national total acreage. While production is currently concentrated in three States, there are greenhouse cucumber producers dispersed throughout the country. These growers are presently located in at least 30 different States including Alaska and Hawaii.

Total U.S. greenhouse cucumber production in 1987–88 was estimated to be about 38 million pounds. California produced approximately 33 percent of the total volume, followed by Florida with 27 percent and Ohio with 17 percent. The record indicates that acreage and production in these States is expected to remain relatively stable in the near future. Witnesses testified that future growth will likely be greatest in other eastern, southern and western locations in the United States. The areas with the most growth potential are those located closer to certain major population centers than current production areas in California, Ohio, and Florida, which now serve these markets.

Witnesses projected different rates of future growth in greenhouse cucumber production. One witness, for example, estimated that 1988–89 production would be up about 15 percent from the previous year. Over the long term, the consensus is that the growth rate is likely to be at least 10 percent a year. However, witnesses indicated that the actual rate of growth is heavily dependent upon the industry's ability to expand current markets and find new ones. An organized marketing research and promotion program, conducted under the proposed order, would be instrumental in accomplishing this objective.

Testimony indicates that the seedless European cucumber is unique from other cucumbers in that it cannot be grown outdoors. Greenhouse cucumbers produce fruit without pollination and therefore are seedless. If pollination occurred, the resulting fruit would have seeds. Also, the fruit would swell and become gourd-like, rather than long and narrow, and would be unmarketable. Greenhouse cucumbers are grown indoors to prevent bees from spreading pollen.

In addition, a greenhouse environment is necessary because the underside of the leaves, stems and suckers of the greenhouse cucumber plant have millions of needle sharp "prongs." The record indicates that even a mild breeze would cause these prongs to scar the fruit and reduce its marketability.

According to record evidence, most of the greenhouse cucumber varieties currently grown in the U.S. are hybrids produced by seed companies in Holland. They vary somewhat in vigor, disease resistance, fruit size, and other fruit characteristics, such as color, ribbiness and neck length. Although many tested varieties produce good yields and fruit quality, most growers tend to favor one of five varieties: Sandra, Toska 70, Farabio, Daleva, and Corona. All of these hybrids are resistant to some diseases such as leaf spot and downy mildew, but lack resistance to powdery mildew and to viruses such as cucumber mosaic, watermelon mosaic, and beet pseudo yellows.

Under optimum conditions, fruit production begins 60 to 70 days after seeding. Daytime temperatures of 70 to 80 degrees Fahrenheit (F) are desirable. While higher temperatures are tolerable, prolonged periods of high temperatures adversely affect fruit quality. Nighttime temperatures no lower than 65 degrees F allow a rapid growth rate and earliest fruit production. Savings in fuel costs may be significant at lower temperatures, but the growth rate would be slower and harvest would be delayed.

The record indicates that greenhouse cucumbers should be harvested after they have reached a uniform diameter and before any yellowing appears at the blossom end. If fruit is left on the plant after it has reached marketable size, development of younger fruit is retarded. Greenhouse cucumbers are typically harvested every one to three days.

According to the record, since it typically takes two months after seeding for a greenhouse cucumber plant to produce fruit, and harvest takes place over a 10 to 12 week period, more than one crop can be planted in a year. Most greenhouse cucumber growers plant two or three crops per year, although some plant a single greenhouse cucumber crop in rotation with other vegetable crops.

The record indicates that after harvest, the thin-skinned fruit is highly susceptible to softening due to moisture loss. Therefore, growers typically wrap greenhouse cucumbers individually in shrink-wrap film as soon as possible after harvest to maintain quality. The wrapped fruit is then packed in cartons and stored at a temperature of about 55 degrees with a relative humidity of 80 to 90 percent. Storage at lower temperatures results in chilling injury, which reduces quality and shelf life.

Record evidence indicates that yields vary considerably among greenhouse cucumber growers. Actual yields depend upon numerous variables, including the length of the harvest period, plant spacing, pruning practices, available light, prevailing temperatures, variety, and nutrition and pest management. One producer witness estimated yields to average between seven and nine pounds of fruit per square foot per year if production is continued a full 12 months (i.e., if three crops were planted). This would produce about 300,000 to 400,000 pounds per acre per year. A second producer estimated yields to range between eight and 10 pounds per square foot, and another producer reported yields of nine pounds per square foot.

Testimony indicates that the cost of producing greenhouse cucumbers differs between States as well as within each State. One witness indicated that total production costs range from $.35 to $.60 per pound (or $5.60 to $9.60 per 16-pound carton) depending on the time of year, age and location of the greenhouse, climate, yield and cultural practices.

One grower witness indicated that the cash cost (which excludes interest on investment, depreciation and operator's wage allowance) of producing one carton of greenhouse cucumbers was about $6.90 in 1986–87, up from $6.60 the previous year. Costs have increased steadily since 1970–71, when it cost about $3.20 to produce a carton of greenhouse cucumbers. Labor is consistently the highest cost component, averaging about 33 percent of the total in recent years. Another major expense is the cost of heating the greenhouse, which accounts for 20 to 25 percent of total cash costs.

The record indicates that per carton production costs are generally highest in the winter, because yields are lower due to less daylight and heating costs are incurred. For example, it was testified that the total cost of production for one winter crop in California per 1,000 square feet of greenhouse in 1986–87 was $1,716. At an average yield of three pounds per square foot for the winter crop, the cost of production per carton was about $9.30. In general, costs can be expected to be even higher in northern growing States.

The record indicates that currently there is little research being done in the U.S. on producing greenhouse vegetables. While some limited research has been conducted on pest control with chemical company grants, other cultural research has not been done due to lack of funds. In contrast, large sums of money are spent each year in other

countries such as Holland and Canada on marketing and production research for greenhouse vegetables. Although some of the research results become available to U.S. growers, not all of the information is immediately available to U.S. growers or is applicable to growing conditions in the U.S. Witnesses testified that certain viruses that can seriously affect greenhouse cucumber production are unique to the United States such as cucumber mosaic, watermelon mosaic, and beet pseudo yellows virus. No variety of greenhouse cucumber is currently available that is resistant to any of these diseases to any great extent. Currently, almost all seed used to produce greenhouse cucumbers in the U.S. are acquired from seed-producing companies in Holland because the Dutch have ownership rights to the parent plants from which the seeds originate.

Testimony indicates that greenhouses are not pest-free and that the greenhouse environment is attractive to pests such as the white fly, vegetable leaf miner, and cabbage looper. These pests gain entrance into greenhouses in many ways including through vents, fan housings, open doorways and on clothes and equipment. Testimony indicated that much research is needed on the issue of pest control. In addition, production research to develop domestic seed sources and to address the unique problems facing U.S. growers would help to reduce production costs and increase productivity.

As previously indicated, the cost of producing greenhouse cucumbers has increased steadily since 1970–71. According to record evidence, at the same time that costs are increasing, prices received for greenhouse cucumbers are declining. The record indicates that f.o.b. prices averaged about $9 per carton in 1983–84 and $8 per carton in 1984–85 and 1985–86. The difference between the highest and lowest prices received in 1985–86 was $14.37 per carton with prices ranging from $5.97 to $20.34 per carton. Record evidence shows that prices received can be less than production costs. Prices are typically at their lowest levels during the spring and early summer, when both greenhouse and field-grown cucumber supplies are at peak levels. In general, prices received during the winter months, when the volume of shipments is low, are higher.

Proponents testified that the annual per capita consumption of greenhouse cucumbers in the U.S. is about .16 pounds, which is significantly below the annual per capita consumption of other salad vegetables such as tomatoes (17 pounds). It is also far less than the annual per capita consumption of greenhouse cucumbers in Canada, which is estimated at 2.4 pounds. Witnesses attributed this difference in large part to Canada's established promotion programs for greenhouse cucumbers. Canada produces about 62 million pounds of greenhouse cucumbers annually, substantially more than is produced in the U.S. Almost all Canadian production is in the three provinces of Ontario, British Columbia and Alberta. Growers in these provinces assess themselves $.19, $.31 and $.03 per box, respectively, to finance promotion programs. A variety of activities have been undertaken, most of them designed to inform the consumer of the product. These activities include providing point-of-purchase materials to retailers, supplying camera-ready art work to magazines and newspapers, attending trade shows, obtaining free promotional space in trade magazines, producing promotional video spots, and conducting in-store demonstrations. Recipes, point-of-sale posters, price cards and banners are also provided to participating retailers. The record indicates that these types of promotion activities have resulted in substantial increases in weekly sales in many Canadian markets.

The record indicates that as a result of these promotion programs, Canadian consumers are far more familiar with greenhouse cucumbers than consumers in the U.S. and purchase them much more frequently. Witnesses testified that a major problem facing the U.S. greenhouse cucumber industry is that most U.S. consumers do not know that greenhouse cucumbers exist, and therefore, what they taste like. Also, many are unaware of the unique characteristics of greenhouse cucumbers, such as being burpless. The record indicates that in consumer surveys conducted in the United States for the industry over the last five years, less than ten percent of those polled had ever eaten a greenhouse cucumber or even knew of them. Those that were aware of greenhouse cucumbers did not know of the differences between them and field-grown cucumbers other than the higher retail price, larger size and that they are wrapped in cellophane. Witnesses testified that once a consumer tries a greenhouse cucumber, there is a very good chance that consumer will make repeat purchases. Therefore, the record indicates that the industry needs to establish a promotion program to educate consumers and encourage them to try greenhouse cucumbers. Such a program would benefit producers and handlers.

Testimony further indicates that the industry needs to better inform produce managers of ways to merchandise and handle greenhouse cucumbers. Due to the limited consumer demand, many produce managers are not inclined to promote greenhouse cucumbers. In addition, many produce managers themselves may not be aware of the differences between greenhouse and field-grown cucumbers. Further, many are unfamiliar with the proper way to handle and store the product. Testimony indicates that there needs to be an industry wide program to educate consumers and produce managers alike, and that a marketing order would provide the necessary means to develop such a program.

Witnesses also testified that market research, in the form of data collection and analysis, would be an essential part of the overall marketing and promotion strategy. Currently, limited data is gathered with respect to greenhouse cucumbers. To effectively promote and market greenhouse cucumbers, proponents testified that additional knowledge of supplies and market conditions and more complete data is necessary to make prudent decisions for focusing promotional efforts and promoting the efficient allocation of resources. The record further indicates that market research could be used to determine the specific type of product consumers prefer and to what extent this product is demanded in different markets. Such information would facilitate efficient distribution which in turn would lower the costs of marketing greenhouse cucumbers to the benefit of growers, handlers and consumers.

Accordingly, the record supports the need for provisions in the proposed marketing order for production research and marketing research and development activities to assist, improve or promote the production, marketing, distribution and consumption of greenhouse cucumbers.

Record evidence indicates that in September 1985, at the request of the industry, the USDA revised the U.S. Standards for Grades of Greenhouse Cucumbers, which appear at 7 CFR Part 51 at sections 51.3855 to 51.3863. These Standards define three grades of greenhouse cucumbers: U.S. Fancy, U.S. No. 1, and U.S. No. 2. One major difference in the requirements for each of the grades relates to the shape of the greenhouse cucumber. The most desirable and highest grade greenhouse cucumbers are fairly straight and only slightly tapered at either end. Other

grade requirements pertain to color and allowable defects such as bruises and scars. The use of the U.S. Grade Standards is voluntary.

The record indicates that most greenhouse cucumber handlers do not have their product graded in accordance with the U.S. Standards. Rather than using the three grades that are specifically defined in the Standards to denote quality, shippers customarily refer to greenhouse cucumbers as being Fancy, Commercial or Salad grade. As generally used, these terms are comparable to the U.S. grades (i.e., a Commercial grade greenhouse cucumber is roughly equivalent to a U.S. No. 2 grade greenhouse cucumber). However, since these terms have not been specifically defined, their use in describing quality is not uniform among handlers. Testimony indicates that what some handlers pack as Fancy fruit, others would consider to be Commercial, and vice versa. Due to the inconsistent application of these terms in marketing greenhouse cucumbers, buyers have no assurance of the quality of the product they are purchasing. When a load of "Fancy" greenhouse cucumbers are received that do not meet a buyer's expectations, future sales to that buyer may be jeopardized. Also, if one shipper chooses to label what is commonly regarded as Commercial grade fruit as Fancy, other shippers of Fancy greenhouse cucumbers would be hurt if this lesser quality offered as top grade fruit resulted in reduced prices. The record indicates that this problem could be resolved under the proposed order by establishing requirements that uniform standards be applied in the labelling of greenhouse cucumbers for shipment to fresh market. Such uniformity could reduce confusion and promote orderly and efficient marketing of the product.

The record further indicates that the packaging of greenhouse cucumbers is not uniform and causes confusion among wholesale buyers. In California and other parts of the western U.S., the most commonly used box to pack greenhouse cucumbers has dimensions of 4½ inches × 13½ inches × 16½ inches, and generally has a net weight of about 16 pounds. This single box is used to pack all sizes of fruit, with a typical pack containing 12, 14, 16 or 18 greenhouse cucumbers. When packing this way, the count is used to denote size.

In Ohio, two box sizes are most commonly used to pack greenhouse cucumbers, each of which differs in size from the single box used in the western U.S. One box, with dimensions of 4¾ inches × 11 inches × 16 inches is used to pack Small greenhouse cucumbers (11 to 12 inches in length) and Medium greenhouse cucumbers (12 to 14 inches). The other box (4¾"×11"×19") is used to pack Large (14 to 16 inches) and Extra Large (16 inches and longer) greenhouse cucumbers.

In Florida and other southeastern States, four different boxes are most commonly used which separate Small, Medium, Large, and Extra Large greenhouse cucumbers. In these States, greenhouse cucumbers are generally packed 12 to a carton. The size of the fruit is indicated by the terms Small, Medium, Large, and Extra Large, which is comparable to the customary practice in the Ohio area.

According to record evidence, while there are seven different boxes most commonly used by greenhouse cucumber shippers, there are an undetermined number of other containers also being used to pack greenhouse cucumbers. Further, the arrangement of the fruit in the box is not uniform. Greenhouse cucumbers may be packed lengthwise or crosswise or, in some cases, a combination of the two. Additionally, there are no requirements that a box contain greenhouse cucumbers of a uniform size, and at times various sizes are packed in a single box. Some producers and handlers are very discriminating about the specific arrangement and sizes they pack. They select and arrange the pack of greenhouse cucumbers to produce a box whose contents are uniform and attractive and do not rattle. Other packers are far less particular, and pack with little regard to uniformity. Typically, a broker never personally sees or inspects the greenhouse cucumbers that have been purchased for various accounts. Therefore, a buyer that has been receiving boxes containing 12 greenhouse cucumbers may suddenly find himself or herself with a certain lot of greenhouse cucumbers that are packed 18 or 16 per container. Since there are no specific requirements, greenhouse cucumbers are sometimes sold below, or above, the prevailing market price level because of the different counts in the various containers. Witnesses testified that the proposed order could benefit the industry by ensuring uniformity through standardization.

Testimony indicates that the multiplicity of containers used in packing greenhouse cucumbers causes confusion in the marketing of the product. The proliferation of container types and sizes also creates inventory problems for purchasers, and often makes the palletization of containers difficult. Handlers frequently encounter difficulty palletizing a variety of container sizes on the same pallet. The record indicates that the industry needs to develop more uniformity in the container sizes that are used by all greenhouse cucumber handlers, and recognized by receivers and distributors. This would provide for more efficient handling of the product.

Taken together, the lack of standardization and uniformity in packing greenhouse cucumbers tends to undermine trade confidence. According to the record, specifications of the size, capacity, dimensions, markings, and pack of the containers that may be used in marketing greenhouse cucumbers would provide a means of maintaining trade confidence, establishing orderly marketing, and improving returns to producers.

The record indicates that in addition to regulations which have as their objective standardizing the pack of greenhouse cucumbers, there is a need to establish minimum standards of size and quality. Several witnesses testified that buyers are often unwilling to pay prices appropriate for good quality greenhouse cucumbers and to increase purchases because they have previously received low quality product. The evidence of record indicates that consumers who purchase greenhouse cucumbers in supermarkets and chain stores, as well as food service and restaurant trade buyers, generally demand reliable supplies of a high quality product. In response, the wholesale trade is demanding a supply of good quality greenhouse cucumbers with standardized characteristics as a condition of future sales.

Therefore, in order to maintain and expand the market for greenhouse cucumbers, authority should be provided to the committee to recommend regulations with respect to grade, size and quality requirements which will promote orderly marketing conditions as will be in the public interest. The testimony is that while there may be a market for some low quality greenhouse cucumbers, the presence of that product in the marketplace, except in certain designated outlets (e.g., farmers' markets and flea markets), generally contributes to disorderly marketing conditions because it lowers the price received for all greenhouse cucumbers and discourages increased consumer acceptance and purchase of the product. Moreover, prices received for those greenhouse cucumbers are substantially less than those received for the higher

quality product. Thus, it is unlikely that most producers could sustain their businesses if a large portion of their returns were derived from the sale of low quality greenhouse cucumbers. Authorizing grade, size and quality regulations would tend to effectuate the declared policy of the Act and would be in the interest of both producers and consumers, as well as be in the public interest.

Exercise of the authority to regulate the quality of fresh market shipments and to establish uniform containers could assure the availability of good quality fruit, strengthen demand, and expand markets for greenhouse cucumbers. Growers would benefit from increased returns, and consumers would benefit by having additional supplies of acceptable quality product available in the marketplace.

In view of the foregoing, it is concluded that there is a need for a marketing order for greenhouse cucumbers grown in the United States, including the District of Columbia. The proposed order would meet the needs of the industry and would tend to effectuate the declared policy of the Act.

3. Specific Terms and Provisions of the Proposed Order

(a) Certain terms should be defined in the order for the purpose of designating specifically their applicability and limitations whenever they are used. The definition of terms discussed below is necessary to attain the objectives of the order and the Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any other officer or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act and insures that it has the same meaning in the order as it has in the Act.

The term "production area" should be defined in the order to delineate the area in which greenhouse cucumbers must be grown before the handling thereof is subject to the provisions of the order. Such term should be defined to include all fifty States of the United States of America and the District of Columbia.

The record evidence indicates that greenhouse cucumbers are known to be currently commercially produced in at least 30 States. They can be grown in any part of the country since they are grown in greenhouses, which may be constructed anywhere. While there are some differences in production practices among the various geographical locations due to climate and other factors, greenhouse cucumbers grown in any given area cannot be readily distinguished from those grown in another area. The record indicates that greenhouse cucumbers from all areas compete in the same markets, and buyers do not make a distinction among greenhouse cucumbers based upon where they were grown. Moreover, greenhouse cucumbers from all locations are commingled on the retail shelf, and consumers do not buy greenhouse cucumbers from one region to the exclusion of those grown in another area. Thus, the marketing of greenhouse cucumbers from one area directly affects the marketing of greenhouse cucumbers grown in another area.

A primary objective of the proposed order is to establish standardized requirements to provide a uniform basis for trading greenhouse cucumbers. Establishing separate regional marketing orders applicable to different parts of the country would prevent attainment of this objective. Further, witnesses testified that any one region is insufficiently large to individually finance the types of research and promotion projects needed by the industry. For example, in California, the largest producing State, there are only about 30 greenhouse cucumber growers and production totals about one million 16-pound cartons. Witnesses indicated that this base is insufficient to support a marketing order program of the type needed. Production research, and market research and development projects contemplated under the proposed order would benefit all U.S. producers.

Accordingly, it is reasonable and necessary for all production to be covered by the proposed order. Further, the issuance of several marketing orders applicable to regional production areas would not effectively carry out the declared policy of the Act.

It is therefore concluded that the production area as defined in the order constitutes the smallest geographic area to which the order may be applied, consistent with carrying out the declared policy of the Act.

The term "cucumbers" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the order would be applicable. The record indicates that "cucumbers" should be defined to mean predominately gynoecious cultivars of Cucumis sativus L., commonly known as seedless European cucumbers, greenhouse cucumbers, European cucumbers, English cucumbers, hothouse seedless cucumbers, or greenhouse seedless cucumbers, that are grown by producers in greenhouses in the production area. These greenhouse cucumbers are readily distinguishable from field-grown cucumbers, and the term has a specific meaning to all producers and handlers. The proposed order has been revised to specify that the cucumbers are to be grown by producers in greenhouses in the production area.

A definition of the term "varieties" should be included in the order to mean and include all classifications or subdivisions of greenhouse cucumbers. The definition would allow for authority for different regulations for different varieties of greenhouse cucumbers in the event such different regulations are deemed appropriate.

The term "producer" should be synonymous with "grower" and should be defined in the proposed order to identify those persons who are eligible to vote for, and serve as, producer members or alternates on the committee and to vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of greenhouse cucumbers for fresh market within the production area.

The record indicates that the term "producer" should not include persons who grow greenhouse cucumbers in an area of 2,500 square feet or less of climate-controlled, weather-protected growing area devoted to greenhouse cucumber production. Record evidence indicates that producers growing greenhouse cucumbers on such a small scale can be considered "hobbyists". Testimony indicates that the industry believes this level of production represents a fair distinction between commercial producers and "hobbyists", particularly since the average size of a commercial greenhouse cucumber operation is 17,000 to 20,000 square feet. The record indicates that "hobbyists" would not be eligible to vote for or serve as committee members or vote in referenda. Testimony was presented that their interests differ considerably from those of commercial growers. Most of those persons who grow greenhouse cucumbers on such a small scale

typically do not sell their product in commercial markets. Rather, they grow greenhouse cucumbers primarily for their own personal consumption, and perhaps for their neighbors as well. As such, these greenhouse cucumbers would be exempt from the handling requirements that may be imposed under the order. The proposed definition of cucumbers has been revised accordingly to specify that the term cucumbers applies only to cucumbers grown by producers, as defined in the proposed order.

Each business unit (such as a corporation or partnership) should be considered a single producer and should have a single vote in nomination proceedings and referenda. The term "producer" should include any person who owns or shares in the ownership of greenhouse cucumbers.

The term "handler" is synonymous with "shipper" and should be defined to identify the persons who would be subject to regulation under the proposed order. Such term should apply to any person, except a common or contract carrier transporting greenhouse cucumbers owned by another person, who performs any of the activities within the scope of the term "handle", as hereinafter defined. The definition identifies persons who would be responsible for meeting the requirements of the order, including paying assessments, complying with any grade, size, pack, quality, and inspection requirements, and submitting reports.

The record indicates that the greenhouse cucumber industry is unique in that many producers also handle their own production. These persons should also be considered handlers when performing handling activities as defined in the order.

Common or contract carriers transporting greenhouse cucumbers which are owned by another person should not be considered as handlers, even though they transport greenhouse cucumbers, because such carriers do not have control over the product being transported. Nor are they the persons who cause the introduction of such greenhouse cucumbers into the channels of commerce. The only interest of common or contract carriers in greenhouse cucumbers is to transport them for a service charge to destinations determined by others.

The term "handle" should be defined to identify those activities which would make a person a handler, and thereby subject to regulation under the marketing order. Except as exempted, such activities should include all phases of selling and transporting greenhouse cucumbers which place them in the channels of commerce. The handling of greenhouse cucumbers can begin with the movement of such cucumbers from the greenhouse where grown and continue until they reach their final destination. The performance of one or more activity such as selling, consigning, delivering or transporting by any person, either directly or through others, should constitute handling. "Handle" and "ship" are used synonymously and the definition should so indicate.

The record indicates that greenhouse cucumbers move to market in several ways. Most growers perform the initial activities which constitute preparing greenhouse cucumbers for market. Subsequent to harvest, these growers clean the fruit, wrap it, sort it by grade, size and other market factors, and pack it in containers. These activities should be included as handling functions, and the person who performs them should be considered a handler since that person would be responsible for the size and quality packed as well as the type of container in which the greenhouse cucumbers are placed.

Some growers sell their product directly to wholesalers or retailers, which is clearly an activity that should be included in the definition of handle. In other cases, a broker is paid a fee or commission to act as an agent in arranging for the sale of the greenhouse cucumbers. A person who retains a broker to act as that person's sales agent should be considered to be performing a handling function.

The record indicates that a number of growers utilize a marketing organization to arrange for the transportation and sale of their greenhouse cucumbers. Customarily, these growers deliver their product to a central facility operated by the marketing organization for assembly into full loads prior to sale and shipment. The delivery of packed fruit to such a location should be considered to be handling.

With the exception of the process specifically excluded from the term "handle", all activities performed after a greenhouse cucumber is harvested and until it is offered for sale at retail, should be included as a handling function.

The record indicates that a specific exception to the term "handle" should be the movement of greenhouse cucumbers from the greenhouse where grown to a handler facility in the production area for preparation for market. Testimony indicates that while most growers sort and pack their fruit, others deliver their greenhouse cucumbers in bulk to a handler facility for such preparation for market. In this case; the greenhouse cucumbers are not being transported to market for immediate consumption, nor are they in the appropriate form for commercial sale since they have not yet been sorted or packed. This exemption should be provided subject to such rules and regulations as the committee may prescribe, with the approval of the Secretary. The proposed order has been revised to reflect this proviso. The record indicates that since the production area includes the entire United States, for compliance purposes it may be necessary to prescribe the specific circumstances under which such movement must occur before it would be considered to be exempt from the term "handle".

The term "committee" should be defined to mean the administrative agency known as the Cucumber Administrative Committee established under the provisions of the marketing order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name of the committee each time a reference to it is made.

The term "fiscal period" should be synonymous with "fiscal year" and should be defined to mean the annual period for which the committee would plan the use of its funds. This period should be defined to mean the twelve month period beginning January 1 and ending December 31. Since cucumbers are shipped year-round and some handlers keep records on a calendar year basis, this period is reasonable. However, if necessary to improve the committee's management or for other reasons based on experience once the order is established, it may be desirable to establish a fiscal period other than one ending on December 31. Thus, authority should be included in the order to provide for the establishment of a different fiscal period if recommended by the committee and approved by the Secretary. It should be recognized that if at some future date there is a change in the fiscal period, such change would result in a transition period being more or less than 12 months. Additionally, the initial fiscal year should commence on the date the order becomes effective and should continue through the following December 31.

The term "district" should be defined as set forth in the order to provide a basis for the nomination and selection of committee members. The record indicates that the establishment of four districts would be appropriate and would assure adequate regional representation of producers on the committee. District 1 should be comprised of the western part of the

country and should include the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington. District 2 should be defined to include the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming. District 3 should encompass the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin. District 4 should comprise the southeastern part of the country and should include the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the District of Columbia. These districts are the same as those proposed in the Notice of Hearing, with one exception. The notice proposed including the District of Columbia in District 3. However, since the surrounding States of Virginia and Maryland are included in District 4, it would be more appropriate to include the District of Columbia in that district. Section 968.12 of the proposed order has been revised accordingly.

The record indicates that these four districts were established based on the most recent data available on the distribution of greenhouse cucumber acreage and greenhouse cucumber production throughout the United States. However, the order should authorize the reestablishment of these districts based on committee recommendation with the approval of the Secretary to reflect future shifts in greenhouse cucumber production and other relevant factors.

"Container" should be defined to mean any receptacle used in the packaging or handling of greenhouse cucumbers. It would include any box, bag, crate, lug, basket, carton, or any other package. A definition of this term is needed to serve as a basis for differentiation among the various receptacles in which greenhouse cucumbers are shipped to the fresh market which could be used in conjunction with the proposed authority to regulate containers.

The term "pack" should be defined to mean the specific arrangement, size, weight, count, or grade of greenhouse cucumbers in a particular type and size of container, or combination of the above. Typical examples of packs currently in use are 12-count, 14-count, 16-count and 18-count packs. Other packs include Small, Medium, Large and Extra Large. Packs are also identified by quality, such as U.S. No. 1, Fancy, Commercial or Salad grade. Often, packs of greenhouse cucumbers are identified by both size and quality (e.g., a 14-count pack of Fancy grade). It is essential that this term be defined in the proposed order so that appropriate regulations may be tailored to particular packs.

The terms "part" and "subpart" should be defined in the order. "Part" means the Order Regulating the Handling of Seedless European Cucumbers Grown in the United States and all rules, regulations, and supplementary orders issued thereunder. The Order shall be a "subpart" of such "part."

(b) In accordance with the Act, a committee should be established to administer the provisions of the order and to provide for effective and efficient operation of the order. The Cucumber Administrative Committee should therefore be established and consist of 11 members, including seven producer members, three handler members, and one public member. The record indicates that a committee composed of 11 members, with a like number of alternates, would provide adequate representation and would provide for reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties.

The record indicates that it is appropriate that a majority of the committee members be producers. Seven of the 11 committee members should therefore be greenhouse cucumber producers. Since the program would be financed by handlers, and handlers would be responsible for complying with the terms of the marketing order, however, it would be reasonable to provide for handler representation on the committee as well. For this reason, proponents proposed that three of the 11 members on the committee be handlers.

The record indicates that producer membership should be allocated among the four established geographic districts to ensure adequate representation from all parts of the production area. Accordingly, two producer members should be selected from District 1, one producer member should be selected from District 2, two producer members should be selected from District 3, and two producer members should be selected from District 4.

Testimony reveals that the division of the production area into districts for the purpose of producer representation on the committee, and the number of producer members to be appointed from each district were given thorough consideration by proponents of the proposed order. In determining the number of producer representatives from each of the districts, consideration was given to the relative greenhouse cucumber production and acreage in each of the districts. Thus, the number of grower members from each district is related to that district's portion of the total greenhouse cucumber acreage in the production area. The record indicates that approximately 38 percent of the current greenhouse cucumber acreage is located in District 1, approximately seven percent in District 2, approximately 21 percent in District 3, and approximately 34 percent in District 4. Accordingly, of the seven producer members, two should represent District 1, one should represent District 2, two should represent District 3, and two should represent District 4.

Each person selected to serve as a producer member or alternate should be an individual who is a producer in the district that person is selected to represent, or an officer or employee of a corporate producer or other type of business unit engaged in producing greenhouse cucumbers in that district. Producer members and alternates should also be residents of the district they are elected to represent. Such persons would be expected to have a strong interest in the effects of committee decisions on greenhouse cucumber producers. As a resident of the district a member represents, such person would be familiar with the problems and concerns of producers in that district.

The record indicates that in order to provide for maximum participation, no single growing entity should be permitted to have more than one producer member seat on the committee. However, this restriction should not apply to alternate members. Therefore, a single grower should be able to have both a member and an alternate member seat on the committee. However, the suggestion in proponents, brief that both grower and handler alternates be required to be from the same organization as the respective members is not adopted because it would limit participation on the committee.

The record indicates that since handlers typically market greenhouse cucumbers on a national basis, there is no need to apportion handler membership among the districts. The three handler members should therefore be selected to represent the production area at large. However, no more than two handlers should be selected from any one district. This was supported by

testimony and proponents' brief. The proposed order has been revised accordingly. Additionally, a single handler entity should not be permitted to hold more than one handler member position (not including alternate positions) on the committee.

Each person selected to serve as a handler member or alternate should be an individual who is a handler, or an officer or employee of a corporate handler or other type of business unit, engaged in handling greenhouse cucumbers grown in the production area. Handler members would therefore be familiar with the supply and demand factors affecting the sale of greenhouse cucumbers and the effect of regulation upon such sales.

Record evidence supports public representation on the administrative committee. While the influence of consumers would be implicitly present in the deliberations of the producer and handler committee members and all committee meetings would be public, the appointment of a public member would offer many advantages. One would be the direct communication between industry members and the public member, who would have no connection with the industry and whose opinions on regulatory standards would represent the general public. Another would be to afford the industry an opportunity to discuss their problems and concerns with someone who would view these problems and concerns from outside the greenhouse cucumber industry.

The public representative and that person's alternate should not be permitted to have a direct financial interest in the production, processing, financing, buying, packing, or marketing of greenhouse cucumbers except as a consumer, nor be a director, officer, or employee of any firm so engaged. Such public representatives should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry. The provisions of the proposed order, as set forth in the Notice of Hearing, specified no qualifications for the public member. Section 968.20 of the proposed order has been revised to include such qualifications, reflecting the record evidence.

Each member of the committee, including the public member, should have an alternate. This would ensure that all segments of the industry and all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted. The order should provide that alternate members should meet the same qualifications for membership as their respective members. They would act in the place and stead of their respective members during temporary absences. Additionally, in the event of the death, removal, resignation or disqualification of a member, the alternate should serve as member until a new member is nominated and selected. Also, since an alternate may be more familiar with a particular issue before the committee than the alternate's respective member, the proposed order should provide that a member may designate that member's alternate to serve as member at such meeting notwithstanding the presence of the member.

If both the member and alternate for a particular committee position are absent from a meeting, the member, the alternate, or the committee, in that order, should be empowered to designate another alternate from the same group (i.e., producer or handler) and district (in the case of producer representatives) to act in the place of the absent member. Only the alternate public member should be able to serve in the absence of the public member, however. This procedure would further insure the proper and efficient operation of the committee.

With the exception of initial members, the term of office of committee members and their respective alternates should be for three years and should begin on January 1 and end on December 31, or for such other three-year period as the committee may recommend and the Secretary approve. The record indicates that a three-year term is appropriate because it would give members sufficient time to become familiar with committee operations and enable them to make meaningful contributions at committee meetings.

The effective date of the order, if issued, may not coincide with the specified beginning date of the terms of office of committee members and alternates. Therefore, a provision is necessary to adjust the initial terms of office. To accomplish this, the order should provide that the terms of office of the initial members and alternates shall begin as soon as possible after the effective date of the order.

In the event that the initial members are selected prior to January 1, 1990, the initial one-year term would not end on December 31, 1989, but would continue until December 31, 1990. Similarly, the two-, and three-year terms would end on December 31, 1991, and 1992, respectively. If these members were selected after December 31, 1990, that remaining portion of the calendar year would not be considered the initial one-year terms and similarly for the first year of the two-year or three-year terms. For the purposes of applying the tenure requirements of the proposed order, each of these initial terms would be considered as a one-, two-, or three-year term even though the actual period of the appointment may be several months longer or shorter, as the case may be.

While it is important to provide a constant infusion of new members to the committee, it is equally important to provide continuity and experience. For these reasons the terms of office should be staggered, with about one-third of the membership to be nominated and selected each year. To begin this process, about one-third of the initial members shall serve one-year terms; about one-third of the initial members shall serve two-year terms; and about one-third of the initial members shall serve three-year terms. Thus, eight of the 11 initial committee members nominated would be appointed for shortened terms. Each subsequent year, about one-third of the positions on the committee would be filled.

The record indicates that it would be preferable to stagger the terms of the initial handler members so that one serves an initial term of one year, one serves an initial term of two years, and one serves an initial term of three years. It follows that of the producer members, two should serve one year terms, two should serve two year terms, and three should serve three year terms. The record further indicates that the term of office of the initial public member should be for two years. The proponents' brief supported this procedure, and the proposed order has been revised accordingly.

The record indicates that the initial terms of office of individual grower and handler members should be determined on a random basis. For example, it was suggested at the hearing that initial nominees draw lots to determine the length of their appointments. As later described, industry committee members would be nominated at meetings held throughout the U.S. Therefore, it would not be possible to draw lots to determine the initial terms at the time nominations are made. Nor would it be desirable to assemble nominees for the purpose of drawing lots prior to selection due to the expense that would be entailed. Therefore, the Secretary shall determine, on a random basis, which of the industry members would be appointed to serve initial terms of one, two and three years. Such a procedure would be practical and consistent with the record evidence.

The record indicates that to provide a continual turnover in membership and infusion of new ideas, the order should provide that no member may serve more than two full consecutive terms on the committee. Any member serving on the committee for two full consecutive terms would not be eligible for renomination as a member for a period of one year. The record indicates that the limitation on tenure should not apply to alternate members. Alternates would be eligible for nomination as members or renomination as alternates at the end of their terms as alternates. It would therefore be possible for an alternate to serve as an alternate and then serve two full consecutive terms as a member of the committee before being ineligible for renomination as a member for one year. Such person would be eligible to serve in an alternate position, however. It appears reasonable that the period of ineligibility for retiring committee members be one year because the pool from which the committee membership is derived may be limited by the number of qualified producers and handlers willing to serve. Also, retiring committee members may provide a level of expertise and advisory talent that cannot be replaced over an extended period of time.

In applying the tenure requirements to initial committee members, the record indicates that the initial members serving a one-year term would be eligible to serve two additional terms. The initial members serving two- and three-year terms would be eligible to serve only one additional term.

Testimony and the proponents' brief supported revising section 968.22 of the proposed order to provide for procedures for nominations of initial Board members. However, the suggestion that nominations be made in meetings conducted by proponents is not adopted. The order should provide that the Secretary conduct meetings for the purpose of nominating initial industry committee members and has been revised accordingly. At least one meeting should be held in each of the four districts. All producers and handlers of record should receive notice of such meetings in sufficient time to enable them to attend. Nominations would be received and voted upon at these meetings. Those persons receiving the highest number of votes for each of the positions to be filled would be considered the nominee for that position.

The record indicates that the committee should be responsible for conducting subsequent nominations. The order should provide that such nominations may be conducted by mail or at district meetings. In the event it is deemed desirable to conduct mail nominations, the committee should recommend procedures to be followed, which would be subject to the Secretary's approval.

If nominations are conducted at meetings, at least one meeting should be held in each district. The precise number, dates and locations of such meetings should be determined by the committee so as to provide all producers and handlers with the greatest opportunity to participate in the process. The testimony indicates that the committee, because of its knowledge of the industry, would be in the best position to select the most advantageous times to conduct such nomination meetings.

Nominations should be supplied in such manner and form as the Secretary may prescribe not later than October 15 of each year, or such other date as may be specified by the Secretary. At least one nominee should be designated for each position which is to be filled the following January 1. Sufficient information about each nominee should be provided so the Secretary is able to determine if the nominees are qualified to serve in the positions for which nominated.

The proposed order should provide that only producers, including duly authorized officers or employees of producers, may participate in the nomination of producer committee members and their alternates, and only handlers, including duly authorized officers or employees of handlers, should participate in designating handler nominees. If nominations are conducted at meetings, only those qualified voters attending the meeting would be eligible to vote. In the case of producer member nominations, such persons should be producers in the district in which they so participate. If a person produces greenhouse cucumbers in more than one district, such person should elect the district in which such person wishes to participate in electing nominees for committee members and alternates. Likewise, a person who both produces and handles greenhouse cucumbers should choose whether to participate in nominations for producer or handler representatives. Each person would thereby be allowed to cast only one vote in the nomination process. This limitation, however, is construed to mean that one vote may be cast for each member and alternate member position which is to be filled in the district and classification that person has chosen to participate.

Provisions also should be made for the nomination and selection of a public member and alternate. The record indicates that the public member and alternate should be nominated by the producer and handler members on the committee at the first committee meeting following the selection of members for a new term of office. It is reasonable to require that the names of nominees for the initial public member and alternate be submitted to the Secretary as soon as possible after the first regular meeting of the initial producer and handler members of the committee.

The record indicates that a person nominated to serve on the committee should qualify by filing with the Secretary a written statement of that person's willingness to serve. This would prevent the appointment of any member not wanting to serve, and would preclude the need to conduct additional nominations. Testimony and proponents' brief recommended revision of section 968.23 to delete reference to the term "acceptance" as confusing. Section 968.23 of the proposed order has been revised accordingly, and in addition the reference to a 15-day period for filing the statement has been deleted to provide flexibility in the order provisions.

The order should provide that the members of the committee shall be selected by the Secretary from persons nominated or from other qualified persons. Each person selected would serve in such capacity and for such term of office as appointed, or until a successor has been selected. In the event nominations are not made within the time and in the manner specified in the order, the Secretary may select members and alternates without regard to nominations. Such selection should be on the basis of representation provided in the order so that the composition of the committee will at all times be consistent with the requirements specified in the order.

The order should provide a method for promptly filling any vacancies on the committee for unexpired terms of office. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. The record indicates that successors may be nominated in the same manner as provided for nominating all other members and alternates (i.e., at district meetings or by mail ballot), or in such other methods as may be recommended by the committee and approved by the Secretary.

Committee members and alternates will necessarily incur some expense while on committee business.

Reasonable expenses, which may include travel, meals and lodging, should be reimbursed to members while attending committee meetings or performing other duties under the order. Therefore, the order should provide that members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses as are authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under the order. Since the committee should be authorized to request the attendance of alternate members at meetings, even though the members may be present, the order should also authorize the committee to pay their expenses.

The order should specify a procedure for the committee to conduct its meetings. It should provide that a majority of all members of the committee shall be necessary to constitute a quorum and to pass any motion or approve any committee action. Accordingly, six of the eleven committee members must be present to constitute a quorum and enable the committee to conduct a meeting. Six affirmative votes would be required to pass any motion or approve any committee action. In testimony and proponents' brief, it was recommended that a quorum should be present at the beginning of a meeting, but a quorum should not be required to exist at the time of voting. This recommendation is denied because it would frustrate the underlying need for a provision requiring a quorum. In addition, the proponents' brief indicated that a suggestion was made at the hearing that a quorum vote should include at least one person from each district. The brief went on to state that such a change was unnecessary because the probability of dominance of any two districts was remote. Accordingly, no change to the proposed order concerning this matter is adopted.

There may be times when it will be impossible to assemble the committee promptly to meet an emergency situation. In addition, there may be situations in which committee action is necessary on minor issues that do not justify the expense of holding an assembled meeting. Therefore, the order should authorize committee members, and alternate members when acting as members, to vote by mail, telegraph, telephone or other means of communication, provided that any vote cast orally be confirmed promptly in writing. If an assembled meeting is held, all votes should be cast in person. When voting takes place at other than an assembled meeting, a reasonable effort should be made to contact each member or alternate. If a vote is conducted by mail, telegraph, telephone or other means of communication, seven concurring votes will be required for any committee action.

The committee should be given those specific powers which are set forth in section 608(7)(C) of the Act. Such powers are granted by the enabling statutory authority and are necessary for an administrative agency, such as the Cucumber Administrative Committee, to carry out its proper functions.

The committee's duties as set forth in the proposed order are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature. They pertain to specific activities authorized under the order, such as investigating greenhouse cucumber marketing conditions, and to the general operation of the order including hiring staff and selecting officers. The duties listed are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the proposed order. It should be recognized that the duties specified are not necessarily all inclusive, and it may develop that there are other duties which the committee may need to perform which are incidental to, and not inconsistent with, these specified duties.

As is discussed further under material issue (3)(h), the committee should develop a specific procedure to enable it to ascertain whether handlers are in compliance with the provisions of the marketing order. Such a procedure could entail hiring an adequate number of fieldpersons to travel throughout the country to visit handler premises and audit handler records.

The record indicates that the committee should be required to consider the reestablishment of districts and the reapportionment of producer membership among the districts at least every five years. Redistricting authority is necessary in the proposed order to enable the committee and the Secretary to consider from time to time whether the basis for representation needs to be changed based on shifts in greenhouse cucumber production and acreage in the United States. As a result of such shifts, the number of producer members allocated to a given district may be disproportionate to the relative acreage or production in that district. Therefore, it is desirable to provide flexibility of operations so that if it would be in the best interests of the industry to reestablish districts or reapportion producer membership, the committee may so recommend and the Secretary may approve such action.

The record indicates that producer membership needs to be allocated on a geographic basis to provide adequate representation of growers throughout the country. While the committee is authorized to recommend changes in the district boundaries, authority should not be provided to reduce the number of districts initially established. For the same reason, each established district shall be entitled to at least one producer representative on the committee. The proposed order has been revised to reflect such provisos.

Any recommendation for changes in district boundaries or reallocation of producer membership should be made well in advance of the beginning of a new term of office. These changes should be made effective sufficiently in advance of the date on which new terms of office begin, so that producers and handlers may be informed of any redistricting or reapportionment of producer membership prior to nominations.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee as well as to finance production research and marketing research and development programs, and any other committee activities as the Secretary may determine to be appropriate. Necessary expenses would include, but would not be limited to, such items as employee salaries and benefits; establishment of at least one office and equipping such office; telephone and mail services; and business related transportation for the committee staff. Another expense would be the cost of reimbursing committee members and alternates for expenses incurred when they attend committee meetings. All such expenses may be incurred on an ongoing basis. The testimony indicated that in an effort to minimize expenses, the committee should investigate the possibility of contracting with another organization for management services to determine whether such an arrangement would be cost effective. This could include shared office space and equipment and the joint employment of staff. Entering such an arrangement would require a written agreement between the committee and

the other organization, which would be subject to the Secretary's approval.

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal year to provide for the Secretary's review and approval. Testimony and proponents' brief recommended that the reference in section 968.32 to "marketing year" be changed to "fiscal period" or "fiscal year" for consistency with section 968.11. Accordingly, the proposed order has been revised to make this change.

The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their share of such expenses based on the amount of product handled by each handler. Each budget submission should therefore include a recommendation to the Secretary of a rate of assessment designed to secure the income required to pay such expenses during the fiscal year.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds. The Secretary may approve an assessment rate increase, and such increase would be applicable to all greenhouse cucumbers handled during the fiscal year to which that assessment rate applies.

No limitations on the annual budget of expenses or rate of assessment are specified in the proposed order, and the level of each would be based upon the committee's recommendation and the Secretary's approval. For illustrative purposes, however, witnesses at the hearing indicated that an initial budget of $320,000 would be reasonable. About 70 percent of the total expenses was earmarked for promotion and research activities. In this sample budget, only $50,000 was allocated for "Administration" (which presumably includes staff salaries and office rent) and $12,000 for travel. Given the national scope of this proposed program, it would appear that the actual expenses to operate this program could be well above the $320,000 discussed at the hearing. It would follow that the assessment rate of one cent per pound (based on estimated 1987–88 production of 38 million pounds) discussed at the hearing could be inadequate to finance this program.

The assessment rate would be approved by the Secretary, based on recommendation of the committee. The committee would not be able to expend funds or assess handlers until the Secretary approved the budgeted expenses and assessment rate for the fiscal year.

Although testimony generally supported levying assessments on a per cucumber basis, some questions were raised as to whether a per cucumber basis would be equitable, because greenhouse cucumbers vary considerably in size, generally ranging from 10 to 18 inches in length. One witness testified that a single container may be packed with a different number of greenhouse cucumbers dependent upon the size of the fruit. On a per cucumber basis, a case packed with 18 greenhouse cucumbers would be assessed 50 percent more than the same case packed with 12 larger greenhouse cucumbers, even though both cases may weigh about the same. Also, different sized containers could be packed with the same number of greenhouse cucumbers. For instance, 12 large greenhouse cucumbers could be packed in one container and 12 small greenhouse cucumbers could be packed in a smaller container. While the weight and volume of the two containers could vary, both would be assessed the same amount.

Although several witnesses indicated that another method of establishing any assessment rate might be preferable (i.e., on a per pound basis), proponents' brief indicated that the proponents strongly believed that assessments computed in any manner other than on a per count basis would lead to inequities. In addition, the brief noted that greenhouse cucumber containers are marked as to count but not as to weight.

Section 968.41 of the proposed order, as it appeared in the Notice of Hearing, provided that each handler's pro rata share of expenses shall be the fixed rate of assessment multiplied by the quantity of greenhouse cucumbers handled. Consistent with the testimony and proponents' brief, this quantity could be defined by count (i.e., the number of greenhouse cucumbers handled). The quantity handled could, however, also be defined in other terms (e.g., the weight of cucumbers handled). This section, as proposed, would provide flexibility to determine the most appropriate quantity basis upon which to levy assessments. Several minor revisions have been made in section 968.41 for clarity.

The order should provide for payment of assessments by first handlers of greenhouse cucumbers for maintenance and functioning of the committee throughout the time the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative. For example, should a significant loss of a particular crop occur due to a plant virus, planned market support activities may be curtailed or cancelled. The committee should be able to continue levying assessments to pay other approved expenses incurred for other purposes.

If a handler does not pay an assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment or interest charge at a rate recommended by the committee and approved by the Secretary. These charges would represent normal, good business practice. This authority is intended to encourage prompt payments by handlers, and to compensate the committee for the loss of assessment funds when they are not paid on time.

The committee should be authorized to accept advanced payments of assessments so that it may pay expenses which may become due before assessment income is received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before sufficient assessment funds are received. Such advanced assessment payments should be based on the first handler's best estimates of future shipments, and should, for accounting purposes, be limited to the current fiscal year's shipments. The committee should also be authorized to borrow money on a short-term basis to meet administrative expenses that may be incurred before assessment income is sufficient to defray expenses. However, the committee should not borrow money to pay obligations if sufficient funds already exist in committee reserve funds or in other committee accounts.

The committee should be authorized to receive voluntary contributions from persons other than those assessed under the order for the payment of production research or marketing research and development activities as described in § 968.50 of the proposed order. The record reflects that such contributions should be received by the committee free from any encumbrances by the donor. The expenditure of such funds should be under the complete control of the committee and subject to the

provisions of the order. The committee should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest. The proposed order has been revised to reflect all such provisos.

With the approval of the Secretary, the committee should be authorized to carry over any excess assessment funds into the following fiscal year as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The reserve should not be allowed to exceed approximately one fiscal year's expenses. This limit on the amount in the reserve was supported by testimony, and the three-year limitation contained in section 968.43 as it appeared in the Notice of Hearing has been revised accordingly.

One purpose of the reserve fund would be for stability in the administration of the order during years of low production. Also, establishing a reserve should minimize the necessity of the committee borrowing money at the beginning of a fiscal year or raising an assessment rate during a season of less than anticipated production. Finally, reserve funds could be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

The record indicates that funds collected through assessments or any other provision of the order should be used only for the purposes set forth in the proposed order. The Secretary should at all times have the authority to require the committee, its members and alternates, and its employees and agents to account for all receipts, disbursements, property or records of the committee for which such person has been responsible. Likewise, when any such person ceases to act in the aforesaid positions, that person should account for all receipts, disbursements, property or records of the committee for which such person has been responsible. In the event the order is terminated or becomes inoperative, the committee should appoint, with the approval of the Secretary, one or more trustees for holding records, funds, or other property of the committee.

(d) The marketing order should authorize the committee to establish and provide for the establishment of production research and marketing research and development activities designed to assist, improve or promote the efficient production, marketing, distribution and consumption of greenhouse cucumbers. Funding for such programs should come from any authorized receipts of the committee, including assessment income, voluntary contributions, and miscellaneous income such as interest. The committee should have the authority to initiate new projects as well as to contribute funds to research which may currently be taking place.

Witnesses testified that public funds for research are scarce and difficult to obtain. Proponents of the marketing order believe that the greenhouse cucumber industry therefore needs to finance production research, especially in the areas of proper chemical usage, disease control and pest management. Potential research topics include control of cucumber mosaic which seriously affects greenhouse cucumber production; powdery mildew which seriously affects plant growth and fruit quality; post-emergence damp-off which retards growth; and crooking, a serious physiological disorder which decreases yields and reduces quality. Further, proponents testified that there are no varieties available which are resistant to these diseases, and research under the marketing order could be undertaken to develop varieties specifically suited to growing conditions in the United States.

The record indicates that any patents, plant materials, copyrights or trademarks which are obtained as a result of research funded under the order should be the property of the U.S. Government as represented by the committee. The committee should be authorized, with the approval of the Secretary, to grant shared rights to the appropriate research institutions for any rents, royalties, residual payments, or income from the rental, sale, leasing, franchising, or other uses of such patents, plant materials, copyrights, inventions or publications. The terms of any research agreement between the committee and any research organization should specify the conditions applicable to the use and ownership of such patents, plant materials, copyrights, trademarks, inventions or publications. Such agreements would require the Secretary's approval.

Witnesses testified that currently there is little statistical information available on a regional or national basis regarding the production and sales of greenhouse cucumbers. The marketing research authority contained in the proposed order would enable the greenhouse cucumber industry to collect the types of data needed to identify and analyze current markets and find ways of expanding current markets and developing new ones.

The committee should be authorized to establish, or provide for the establishment of, marketing research and market promotion and development programs designed to assist, improve or promote the marketing, distribution and consumption of greenhouse cucumbers grown in the production area. Witnesses testified that one current marketing problem is the lack of consumer awareness of the unique characteristics and the uses of greenhouse cucumbers. The order would enable the establishment of an industry-wide program to acquaint wholesalers, retailers and consumers with the greenhouse cucumber and the proper way of handling the product.

The committee should have the authority to enter into contracts with trade or promotional firms or organizations to carry out such market research and promotion programs. Market development activities should focus on consumer education and improving the marketing and distribution of greenhouse cucumbers. The committee should distinguish between promotional programs which are allowed under the Act, and paid advertising, which is not authorized for cucumbers. No funds collected under the order could be used to finance paid advertising.

Market promotion programs for greenhouse cucumbers carried out with funds collected under the order must be generic in nature and should not use particular brand names, handler or producer names, or favor any particular region of the production area. In addition, promotional material may not make false or unwarranted claims about greenhouse cucumbers or include statements which disparage other agricultural commodities.

All research and promotion projects to be conducted under the order in a given fiscal period should be submitted to the Secretary for approval. No funds shall be expended for such projects until they are approved by the Secretary. This would ensure that all projects are appropriate, given the order's authority, and that sufficient funds will be available for their funding. Further, the committee should have the responsibility for reporting at the conclusion of such production research and marketing research and promotion programs. It should also report, at least annually, on the progress of such programs. Such reports should be made

available to growers and handlers and to the Secretary.

The record does not indicate the amount of assessment funds that would be allotted for production research and market development programs. The committee should have the responsibility to determine the amount of funds to be spent on each program each year. Such determination should be based on the needs of each program each year. The amount of funds to be spent on research and development programs would be included in the annual budget required to be submitted to the Secretary prior to each fiscal period for the Secretary's review and approval.

(e) The marketing order should authorize the regulation of the handling of greenhouse cucumbers by quality, size, pack or container, to establish and maintain orderly marketing conditions for greenhouse cucumbers.

In order to provide the Secretary with the information necessary to consider and appraise any recommendation for the establishment or continuation of any handling regulation, the committee should be required to prepare a marketing policy prior to each season. The policy should provide the committee's overall assessment of the upcoming season and should be submitted by the committee prior to or at the same time any recommendations are made relative to regulations for such season. It should include information relative to the type of regulations expected to be recommended during the marketing season. In developing its marketing policy, the committee should give consideration to factors which affect the production and marketing of greenhouse cucumbers, and the policy should provide a comprehensive evaluation of current and prospective supply and market conditions. Included in the marketing policy should be an appraisal of the expected volume of available supplies, including the anticipated quality and sizes of the forthcoming crop, since these factors would influence any committee recommendation for regulation. The committee should consider expected overall demand conditions for greenhouse cucumbers, including demand in different outlets, since different handling requirements may be appropriate for the various markets. The committee should evaluate current and prospective supplies of competing commodities such as field-grown cucumbers, imported supplies, and other vegetables. It would also be appropriate that the marketing policy discuss the trend and level of consumer income as they relate to demand for greenhouse cucumbers. Finally, the committee should include in its marketing policy any other factors which have a bearing on the marketing of greenhouse cucumbers.

The committee's marketing policy should be written in report form and include not only the committee's proposals for the marketing season and why it has arrived at such conclusions, but also appropriate statistical data and other facts which it considered in arriving at its recommendations. Such report should be as complete as possible so that the Secretary and the industry may know what considerations were involved in the preparation of the marketing policy. The committee's marketing policies should be submitted to the Secretary and made available to producers and handlers in the production area as a means of keeping them informed of committee considerations.

The committee, as a representative body of the industry, should be authorized to recommend such grade, size, quality, pack and container regulations as are authorized by the proposed order, and as would tend to effectuate the declared policy of the Act. In making its recommendations, the committee should give consideration to current information with respect to factors affecting the supply and demand for greenhouse cucumbers during the period or periods when it is proposed that regulations be made effective. With each such recommendation for regulation, the committee should submit to the Secretary the data and information on which such recommendation is predicated and such other information as the Secretary may request. At a minimum, such information should include a clear definition of the marketing problem(s) or condition(s) the committee's recommendation is intended to address; a discussion of the conditions that created or led up to that problem or condition; and an analysis of how the recommended action would serve to correct the existing problem or condition. Additionally, the committee should submit information as to whether there are viable alternative courses of action that could be taken to solve the problem or condition, and what the expected impacts and results of the chosen course of action would be, including an assessment of the probable impact of the recommendation on small businesses. Finally, the committee should recommend the specific period of time the recommended regulation should be effective and why that time period is appropriate, and an indication as to whether the action is controversial or would raise any special problems, including the committee's vote on the recommendation and a discussion of the reasons for any dissenting votes. Any recommendation for regulation should be made in sufficient time for the Secretary to implement such recommendation by means of informal rulemaking.

The marketing order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, maturity, pack and container regulations which are necessary for the improvement of marketing conditions for greenhouse cucumbers grown in the U.S. Such regulations could: (1) Limit the handling of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of greenhouse cucumbers; (2) Establish, in terms of grades, sizes or both, minimum standards during any period when season average prices are expected to exceed the parity price level; and (3) Fix the size, capacity, weight, materials, dimensions, markings, or pack of the container or containers that may be used in handling greenhouse cucumbers.

The record indicates that the grade, size, and quality, of greenhouse cucumbers which are shipped at any particular time have a direct effect on returns to growers. Sales of poorer grades and less desirable sizes return lower prices than do the better grades and sizes. It was testified that second quality fruit sells at a significantly lower price than first quality, and in some years, prices for second quality product are less than the cost of production and packing, with no return to the grower. Further, the presence of low quality greenhouse cucumbers on the market decreases overall demand for the product, resulting in lower returns for even the better grades. A restriction under the marketing order of the shipment of greenhouse cucumbers of such low quality could result in higher returns for the better grades marketed by eliminating the price-depressing effect of poor quality.

The record indicates that there are many factors used to determine the relative quality of greenhouse cucumbers. One important factor is the shape of the fruit. Top quality greenhouse cucumbers are those that are straight, and fruit that is curved or otherwise misshapen is considered to be of lower quality. Shape is an important factor not only because the straighter greenhouse cucumbers result in a more uniform and appealing pack, but

because they can be wrapped more effectively. Although it is possible to shrink-wrap curved fruit, the wrapping generally does not seal properly, allowing air to enter the wrapping. This results in accelerated deterioration of the greenhouse cucumbers.

Other factors relating to quality include color, with uniformly dark green fruit considered the highest quality. In addition, better grade greenhouse cucumbers are those that are clean, firm, free from decay, cuts or mechanical injury, and free from injury by scars, freezing, disease, insects, or other means. Any or all of these factors, as well as others, could be used to prescribe minimum quality standards under the proposed order.

The record indicates that a minimum grade requirement could be established under the proposed order. Such a requirement could be in terms of one of the grades defined in the U.S. Standards for Grades of Cucumbers [7 CFR Part 51], (e.g., U.S. No. 1 or U.S. No. 2). A grade requirement could also be in terms of a modification or variation of a U.S. grade. For example, a regulation could specify that greenhouse cucumbers be at least U.S. No. 2 grade, but an additional tolerance for a specific defect could be allowed. Likewise, a grade regulation could vary the terms in the standards by prescribing, for example, a percentage of the grade that is required (e.g., 85% U.S. No. 1).

The record indicates that the percentage of top quality greenhouse cucumbers produced varies considerably among growers. One reason is that cultural practices directly affect the quality of production. For example, testimony indicates that crooked fruit can be detected very early in the growing phase. If misshapen fruit is pruned when first observed, the energy of the greenhouse cucumber plant then goes into producing additional fruit, increasing the percentage of straight cucumbers. Likewise, a grower's pest management practices can affect the quality of that grower's output. The record indicates that the establishment of quality regulations under the order could result in improved cultural practices among greenhouse cucumber growers. Further, the research authority under the proposed order could be used to determine the production practices that optimize fruit quality.

The record indicates that authority should be included in the proposed order for different regulations for different varieties of greenhouse cucumbers. While those varieties currently being grown have generally similar characteristics, there may be varieties produced in the future for which different standards may be appropriate. For example, one witness indicated that testing is being conducted on a new variety which looks promising, but which tends to be shorter in length than currently available greenhouse cucumbers.

The record evidence supports providing the authority to establish pack requirements for greenhouse cucumbers. As discussed earlier, greenhouse cucumber shippers tend not to grade their product in accordance with the U.S. Standards, but use undefined terms (such as "Commercial") to designate quality. Further, some packers do not sort their supplies by quality and size, and pack fruit of varying sizes and quality in a single container. The record indicates that the authority for pack requirements could be used to define the packs which may be used in shipping greenhouse cucumbers. Such requirements could, for example, specify that greenhouse cucumbers be packed in accordance with the U.S. Standards and that each grade be packed separately. Likewise, the committee could recommend that packed fruit be uniform in size, by establishing maximum and minimum sizes or setting an acceptable variance. An example of a pack requirement exists in the U.S. Standards for Greenhouse Cucumbers. The standard pack requirements specified therein state that each piece of fruit be wrapped; that the fruit be packed fairly tight in layers; and that the cucumbers in any given container vary by not more than two inches in length. The testimony was that such uniform packing standards could reduce buyer confusion and contribute to more orderly marketing conditions and higher demand for greenhouse cucumbers.

The record indicates that the committee should be authorized to recommend, and the Secretary establish, such minimum standards of grade and size during any period when greenhouse cucumber prices are above parity as will be in the public interest. Some fruit is of such low quality that it does not give consumer satisfaction. Because of the large amount of waste, consumers may not receive proper value for their expenditures, and it therefore would not be in the public interest to permit shipments of such low quality. The shipment of substandard product also tends to disrupt general market conditions for greenhouse cucumbers and the discounted prices received adversely affect grower returns. The order should therefore authorize the establishment or maintenance of minimum standards of grade and size in above-parity situations.

The marketing order should also authorize the Secretary to fix the size, capacity, weight, materials, dimensions, markings or pack of the container or containers that may be used in the handling of greenhouse cucumbers. Such requirements would tend to promote orderly marketing conditions by standardizing the containers used by greenhouse cucumber shippers. This authority could be used to reduce the number of containers currently in use, to establish specific weight requirements, or to require that, for example, each container be marked with the count and grade of its contents.

The order should provide for the modification, suspension, or termination of any regulation whenever such action would tend to advance the objectives of the Act and the order. The order should authorize such action based upon recommendation of the committee, or other information available to the Secretary. This authority would provide flexibility for times when, due to changes in circumstances, a given regulation is no longer appropriate for prevailing market conditions, and thus, should be modified, suspended, or terminated, as applicable.

The record evidence indicates that the handling of greenhouse cucumbers for certain uses should be exempt from any handling requirements imposed under the order, including payment of assessments, quality regulations, and inspection and certification requirements. The record indicates that shipments of greenhouse cucumbers for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products do not materially affect the marketing of greenhouse cucumbers in commercial fresh market channels. Thus, such shipments should be exempt from most handling requirements.

Similarly, exemptions from regulations or modifications of those regulations should be authorized for the handling of greenhouse cucumbers to designated markets. Such authority could provide a vehicle for developing markets that are not now available to the industry and to recognize other situations in which regulation may be unnecessary. Thus, the committee should have the flexibility to recommend exemptions for shipments to certain markets (e.g., farmers markets) from any or all regulatory requirements. The record indicates, for example, that foodservice operators may accept lower quality fruit than do other buyers. If such is deemed to be true, such shipments could be subject to lower

minimum quality standards or exempt from such standards altogether.

To prevent possible abuse of the exemption provisions, the committee should have the authority, upon approval by the Secretary, to prescribe appropriate rules, regulations, and safeguards to prevent greenhouse cucumbers handled under an exemption from entering fresh commercial channels or from being used for some purpose other than the specific purpose authorized.

(f) The record evidence is that inspection and certification of greenhouse cucumbers shipments are necessary, and are the most practicable way to assure that the handling of greenhouse cucumbers complies with the regulations that may be issued pursuant to the order. The Federal-State Inspection Service has inspectors throughout the United States. At the hearing, a representative of that agency indicated that it would be able to provide any necessary mandatory inspection and certification which may be required for greenhouse cucumbers. Thus, any inspections required under the marketing order should be conducted by the Inspection Service in accordance with its accepted procedures, including those relating to positive lot identification, if required.

Promptly after inspection and certification, each handler would submit, or cause to be submitted, to the committee a copy of the inspection certificate issued with respect to such greenhouse cucumbers. The certificate would verify that the greenhouse cucumbers meet the order requirements. The testimony is that it would be the handler's responsibility to see that the certificate is submitted to the committee. However, the handler may arrange with the Inspection Service for it to send in the certificates on behalf of the handler.

The record indicates that the proper time for the required inspection under the proposed order would be just prior to shipment when a true appraisal of a lot can be made. Since greenhouse cucumbers are highly perishable and deteriorate over time, the order should authorize establishment of a maximum time for which an inspection certificate is valid. Such authority could be used as necessary to require that greenhouse cucumbers be inspected within a specified time prior to the time it moves into the channels of commerce. It follows that if the greenhouse cucumbers are not shipped within such time, they would be subject to reinspection. The committee should submit to the Secretary for approval any recommendation concerning the length of time the certificate is valid.

Responsibility for obtaining inspection would generally fall on the person who first handles greenhouse cucumbers since that handler is usually responsible for the grade, size, quality and pack of the greenhouse cucumbers being shipped. However, there may be instances when it could be determined that inspection would not be practicable. Subject to approval of the Secretary, the committee could prescribe rules and regulations governing the issuance of waivers of inspection. Moreover, any such waiver would not relieve the handler from complying fully with any other order requirements.

The order should authorize the committee to enter into an agreement with the Federal-State Inspection Service to collect from handlers the costs of inspection which would then be paid by the committee to the Inspection Service. The record indicates that such an arrangement could serve to reduce overall inspection costs, to the benefit of greenhouse cucumber producers and handlers.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the order. The record indicates that in the normal course of business, greenhouse cucumber handlers collect and record information that may be needed by the committee. Handler witnesses expressed the belief that the reporting requirements that may be imposed under the order would not constitute an undue burden on their businesses.

Reports could be needed by the committee for such purposes as: collecting assessments; compiling statistical data for use in evaluating market development projects; making recommendations for production research; and determining whether handlers are complying with order requirements. The record evidence indicates that to the extent necessary for the committee to perform its functions, handlers would likely be required to provide information on the quantity of greenhouse cucumbers handled each year. This information could include such items as the quantities of greenhouse cucumbers received and disposed of by the handler, the date of each such receipt and disposition, and the destination of such shipments. This should not be construed as a complete list of information the committee might require, nor should it be assumed that all of the above will necessarily be required of handlers. There may be other reports or kinds of information which the committee may find necessary for the proper conduct of its operations under the proposed order. Therefore, the committee should have the authority, with the Secretary's approval, to require each handler to furnish such information as it finds necessary to perform its duties under the proposed order.

Each handler should be required to maintain such records of greenhouse cucumbers received and disposed of as may be necessary to verify the reports that the handlers submit to the committee. All such records should be maintained for two fiscal years after the fiscal year in which the transactions occurred.

The order should provide that the Secretary and the committee, through authorized employees, shall have access to handlers' premises to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the order. The proposed order has been revised to specifically refer to the Secretary.

All reports and records submitted for committee use by handlers would be required to be kept confidential and the contents disclosed to no one other than persons authorized by the Secretary, except as required by law. However, the committee should be authorized to release composite information compiled from many or all reports. Such composite information could be helpful to the committee and to the industry in planning operations under the order or in promoting the industry as a whole. Any release of such information should not disclose the identity of the person furnishing the information or such person's individual operation.

(h) No handler should be permitted to handle greenhouse cucumbers, except in conformance with the provisions of the marketing order. The record indicates that if the program is to operate effectively, compliance with its requirements is essential, and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to other handlers who are in compliance with the order and could impair the effective operation of the program.

Proponent witnesses indicated that this program would be self-policing because handlers throughout the country are familiar with each others' operations. However, leaving the function of ensuring compliance to individual handlers would not be practicable especially in view of the size

of the production area and the scattered locations of handlers. Accordingly, it is unlikely that compliance could be assured by the self-policing method espoused by proponents. Additionally, some handlers ship directly to the end-user (i.e., the retailer), bypassing the terminal markets where violations are often easily detected.

Based on the record evidence, the proposed order provides as one of the committee's duties that it should investigate compliance with the provisions of the order. The committee should develop a plan to determine compliance with any regulation issued under the order, which could include provision for an adequate committee field staff to oversee compliance of this program. The functions of this staff could entail travelling throughout the country to audit handlers' books. It is necessary that the committee maintain an adequate staff to carry out a responsible and credible compliance effort.

(i) The provisions of sections 968.82 through 968.99 of the order, as contained in the Notice of Hearing and hereinafter set forth, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act, and are necessary to effectuate the other provisions of the marketing order and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading, are as follows: § 968.82 Right of the Secretary; § 968.83 Termination; § 968.84 Proceeding after termination; § 968.85 Effect of termination or amendment; § 968.86 Duration of immunities; § 968.87 Agents; § 968.88 Derogation; § 968.89 Personal liability; § 968.90 Separability; and § 968.91 Amendments. Those provisions applicable to the marketing agreement only are: § 968.97 Counterparts; § 968.98 Additional parties; and § 968.99 Order with marketing agreement.

The Secretary is charged with oversight of the proposed order, and must ensure that such administration effectuates the declared policy and provisions of the Act. The order should therefore contain a provision that states that the Secretary shall have the continuing right to disapprove any committee action.

The order should provide that the Secretary shall terminate the marketing order when termination is favored by a majority of producers who, during a representative period as determined by the Secretary, produced more than 50 percent of the volume of greenhouse cucumbers which were produced within the production area.

The order should also provide that the Secretary conduct a continuance referendum among greenhouse cucumber producers within five years after the effective date of the marketing order. Subsequent continuance referenda should be scheduled every five years thereafter. Such referenda would provide an effective means of ascertaining whether producers favor continuance of the program. Continuance referenda would ensure that the marketing order is operated in a manner that is acceptable to growers and would allow producers the opportunity to evaluate the program periodically. Testimony and proponents' brief recommended that section 968.83 be revised to provide for the same voting requirements for termination and continuance referenda. With regard to termination, the voting percentages are the same as those provided for termination in the Act. However, since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine overall producer support or opposition to termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, authority for continuance referenda should be included. Continuance should be based upon the affirmative vote of two-thirds of the producers voting or producers of two-thirds of the volume of greenhouse cucumbers represented in the referendum.

The Act requires that in the promulgation or amendment of a marketing order, at least two-thirds of the producers voting, by number or volume represented in the referendum, must favor the issuance or amendment of a marketing order. Continuance referenda requirements are based on the same standard of industry support. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of greenhouse cucumbers represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum, but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means. Accordingly, this recommendation is denied. However, a change to § 968.83(c)(1) is made to more closely reflect the language in the Act.

Committee members and employees should not be held personally responsible for honest mistakes or errors of judgement that were unintentionally committed during the time of their service on the committee. However, committee members, alternates or employees should be accountable for intentional acts of willful misconduct. The record shows that the committee should report any known, intentional acts of willful misconduct of committee members or employees to the Secretary for appropriate action.

Miscellaneous changes have been made in the proposed provisions of the marketing order for clarity and to make them consistent with the evidence of record.

Ruling on briefs of interested parties

At the conclusion of the hearing the Administrative Law Judge fixed November 1, 1988, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing. One brief was filed by George H. Soares on behalf of the proponent group. In summary, the brief reaffirmed the testimony presented at the hearing in support of the proposed marketing order and recommended several amendments to the proposed marketing order.

Each point included in the brief was carefully considered, along with the evidence in the record, in making the findings and reaching the conclusions set forth in this recommended decision. To the extent that any suggested findings or conclusions contained in the brief are inconsistent with the findings and conclusions of this recommended decision, the request to make such findings or to reach such conclusions are denied.

General Findings

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon a proposed marketing agreement and order regulating the handling of seedless European cucumbers grown in

the United States. Upon the basis of the record of the hearing, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The said marketing agreement and order regulate the handling of greenhouse cucumbers grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of greenhouse cucumbers produced in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of greenhouse cucumbers grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 968

Cucumbers, Marketing agreements and orders, United States.

Recommended Marketing Agreement and Order

The following marketing agreement and order is recommended as the detailed means by which the foregoing conclusions may be carried out.

It is proposed that Title 7, Chapter IX be amended by adding Part 968 to read as follows:

PART 968—SEEDLESS EUROPEAN CUCUMBERS GROWN IN THE UNITED STATES

Definitions

Sec.
968.1 Secretary.
968.2 Act.
968.3 Person.
968.4 Production area.
968.5 Cucumbers.
968.6 Varieties.
968.7 Producer.
968.8 Handler.
968.9 Handle.
968.10 Committee.
968.11 Fiscal period.
968.12 District.
968.13 Container.
968.14 Pack.
968.15 Part and subpart.

Administrative Body

968.20 Establishment and membership.
968.21 Term of office.
968.22 Nomination.
968.23 Qualifications.
968.24 Selection.
968.25 Failure to nominate.
968.26 Alternate members.
968.27 Vacancies.
968.28 Powers.
968.29 Duties.
968.30 Procedure.
968.31 Expenses and compensation.
968.32 Annual report.

Expenses and Assessments

968.40 Expenses.
968.41 Assessments.
968.42 Delinquent assessments.
968.43 Accounting.

Research and Development

968.50 Research and promotion.
968.51 Patents, copyrights, inventions, trademarks, and publications.

Regulation

968.60 Marketing policy.
968.61 Recommendations for regulation.
968.62 Issuance of regulations.
968.63 Modification, suspension, or termination of regulations.
968.64 Special purpose shipments.
968.65 Inspection and certification.
968.66 Minimum quantities.

Reports and Recordkeeping

968.70 Reports and records.

Compliance

968.80 Compliance.

Miscellaneous Provisions

968.82 Right of the Secretary.
968.83 Termination.
968.84 Proceedings after termination.
968.85 Effect of termination or amendment.
968.86 Duration of immunities.
968.87 Agents.
968.88 Derogation.
968.89 Personal liability.
968.90 Separability.
968.91 Amendments.

Marketing Agreement

968.97 Counterparts.
968.98 Additional parties.
968.99 Order with marketing agreement.

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*

Definitions

§ 968.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture to whom has been delegated, or to whom may hereinafter be delegated, the authority to act for the Secretary.

§ 968.2 Act.

"Act" means Public Act No. 10, 73rd Congress (May 12, 1933) as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 968.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 968.4 Production area.

"Production area" means the fifty States of the United States of America and the District of Columbia.

§ 968.5 Cucumbers.

"Cucumbers" means predominately gynoecious cultivars of *Cucumis sativus L.*, commonly known as seedless European cucumbers, greenhouse cucumbers, European cucumbers, English cucumbers, hothouse seedless cucumbers, or greenhouse seedless cucumbers, grown by producers in greenhouses in the production area.

§ 968.6 Varieties.

"Varieties" means and includes all classifications of cucumbers according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 968.7 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of cucumbers grown in a greenhouse exceeding 2500 square feet of climate-controlled, weather-protected growing area devoted to cucumber production.

§ 968.8 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier transporting cucumbers owned by another person) who handles cucumbers, or causes cucumbers to be handled.

§ 968.9 Handle.

"Handle" is synonymous with "ship" and means to sell, consign, deliver, or transport cucumbers, or to cause cucumbers to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided*, That under such rules and regulations as the committee, with the approval of the Secretary may prescribe, that the term handle shall not include the transportation within the production area of cucumbers from the greenhouse

where grown to a handling facility for preparation for market.

§ 968.10 Committee.

"Committee" means the Cucumber Administrative Committee established pursuant to § 968.20.

§ 968.11 Fiscal period.

"Fiscal period" is synonymous with "fiscal year" and means the 12-month period beginning on January 1 and ending December 31, or such other period as the committee, with the approval of the Secretary, may prescribe: *Provided*, That the initial fiscal period shall begin on the effective date of this subpart.

§ 968.12 District.

"District" means each of the geographic divisions of the production area initially established pursuant to this section, or as reestablished pursuant to § 968.29(n).

(a) District 1 shall include the States of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, and Washington.

(b) District 2 shall include the States of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

(c) District 3 shall include the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont and Wisconsin.

(d) District 4 shall include the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia.

§ 968.13 Container.

"Container" means any type of receptacle used in the packaging or handling of cucumbers.

§ 968.14 Pack.

"Pack" means the specific arrangement, size, weight, count, grade, or any combination of these, of cucumbers in any type of container.

§ 968.15 Part and subpart.

"Part" means the Order Regulating the Handling of Seedless European Cucumbers Grown in the United States and all rules, regulations, and supplementary orders issued thereunder. The aforesaid Order Regulating the Handling of Seedless European Cucumbers Grown in the United States shall be a "subpart" of such "part."

Administrative Body

§ 968.20 Establishment and membership.

(a) The Cucumber Administrative Committee is hereby established, consisting of eleven members, to administer the terms and provisions of this part. Seven of the members shall be producers, or officers or employees of producers; three of the members shall be handlers, or officers or employees of handlers; and one shall be a public member. Each member shall have an alternate who shall have the same qualifications as the member for whom such person is an alternate.

(b) Two producer members shall be from District 1; one producer member shall be from District 2; two producer members shall be from District 3; and two producer members shall be from District 4. Handler members shall be selected from the production area at large: *Provided*, That no more than two handlers shall be selected from any one district.

(c) No producer or handler shall have more than one member on the committee.

(d) The public member shall be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of cucumbers, except as a consumer, nor be a director, officer or employee of any firm so engaged.

§ 968.21 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December, three years hence, or for such other three-year period as the committee may recommend and the Secretary approve: *Provided*, That the members of the initial committee shall begin their term of office upon appointment by the Secretary and that if the initial committee is appointed after the beginning of a fiscal year, that portion of the fiscal year shall not be counted in calculating terms of office. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their successors are selected.

(b) The terms of office shall be staggered so that approximately one-third of the total committee membership shall terminate each year. Two producer members and one handler member shall serve an initial term of one year; two producer members, one handler member and the public member shall serve initial terms of two years; and three producer members and one handler member shall serve initial terms of three years.

(c) The consecutive terms of office of members shall be limited to two terms, except for those three initial members who serve for one year shall be eligible for renomination for two full terms at the end of their initial one-year term. Any member serving on the committee for two full consecutive terms shall not be eligible for renomination to the committee for a period of one year. Alternate members shall be eligible for renomination at the end of their respective terms.

§ 968.22 Nomination.

(a) *Initial Members.* Nominations for the initial producer and handler members shall be conducted by the Secretary. Nominations for producer and handler members and alternates shall be conducted at a meeting or meetings of producers and handlers in each district. A nomination for the public member, together with a nomination for the alternate public member, shall be made by the initial producer and handler members of the committee as soon as possible after their selection.

(b) *Successor Members.* The committee shall hold or cause to be held a meeting or meetings of producers and handlers in each district for the purpose of designating nominees for successor members and alternate members of the committee: *Provided*, That the committee may conduct nominations of producers and handlers by mail in a manner recommended by the committee and approved by the Secretary. One nominee shall be submitted for each member position on the committee and one nominee for each alternate member position. Such nominations shall be submitted to the Secretary by the committee not later than October 15 of each year, or such other date as may be specified by the Secretary. The committee may prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nominations.

(c) Only producers may participate in the nomination of producer members and their alternates. Each producer shall be entitled to cast only one vote for each nominee to be elected in the district in which such producer produces cucumbers. No producer shall participate in the election of nominees in more than one district in any one fiscal year.

(d) Only handlers, including a duly authorized officer or employee of handlers, may participate in the nomination and election of nominees for

handler members and their alternates. Each handler shall be entitled to cast only one vote for each handler nominee.

(e) Any person who is engaged in both producing and handling cucumbers shall elect the classification in which to participate in designating nominees.

(f) The committee members shall nominate the public member and alternate member at the first meeting following the selection of members for a new term of office.

§ 968.23 Qualifications.

Any person nominated to serve on the committee shall, prior to selection as a member or alternate member of the committee, qualify by filing with the Secretary a written statement indicating that person's willingness to serve.

§ 968.24 Selection.

From the nominations made pursuant to § 968.22 of this subpart, or from other qualified persons, the Secretary shall select committee members and alternates on the basis of representation provided for in § 968.20 or as modified pursuant to § 968.29.

§ 968.25 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in § 968.22 of this subpart, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in § 968.20 of this subpart or as modified pursuant to § 968.29.

§ 968.26 Alternate members.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate in the member's absence, or when designated to do so by such member. In the event both a member and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order may designate another alternate from the same district and the same group (handler or producer) to act in the place of such member. In the event of the death, removal, resignation, or disqualification of a member, that member's alternate shall serve until a successor for the member's unexpired term is selected. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 968.27 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor to fill the unexpired term of such member or alternate member of the committee shall be nominated in the manner specified in § 968.22 or by such other method as may be recommended by the committee and approved by the Secretary.

§ 968.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this subpart.

§ 968.29 Duties.

The committee shall have, among others, the following duties:

(a) To select, from among its membership, such officers as may be necessary, and to define the duties of such officers, and to adopt such rules or by-laws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees and agents, as it may deem necessary, and to determine the compensation and to define the duties of each;

(c) To appoint such subcommittees as it may deem necessary;

(d) To submit to the Secretary, at least 90 days prior to the beginning of each new fiscal period, or such other date as may be specified by the Secretary, a budget for such fiscal period, including a report and explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(g) To cause its books to be audited by a certified public accountant at least once each fiscal year, or at such times as the Secretary may request; to submit copies of each audit report to the Secretary; and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers.

(h) To act as intermediary between the Secretary and any producer or handler;

(i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cucumbers;

(j) To investigate compliance with the provisions of this part;

(k) To notify producers and handlers of all meetings of the committee to consider recommendations for regulations and of all regulatory actions taken;

(l) To submit to the Secretary such available information as may be requested or that the committee may deem desirable and pertinent;

(m) To provide to the Secretary the same notice of meetings of the committee and its subcommittees as is given to its members; and

(n) At least once every five years, to review the geographic distribution of cucumber acreage and production in the production area and, if warranted, recommend to the Secretary the reapportionment of producer members among the districts, or the reestablishment of districts within the production area: *Provided,* That the number of districts shall not be less than four and that each district shall be entitled to at least one producer representative on the committee. Any such changes would require the Secretary's approval.

§ 968.30 Procedure.

(a) At an assembled meeting, all votes shall be cast in person and six members of the committee shall constitute a quorum. Decisions of the committee shall require the concurring vote of at least six members.

(b) The committee may vote by mail, telephone, telegraph, or other means of communication: *Provided,* That each proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes shall be required for approval of a committee action by such method.

§ 968.31 Expenses and compensation.

Members of the committee and alternates, when serving as members, shall serve without compensation but shall receive reimbursement for necessary expenses incurred by them in attending committee meetings and in performing their duties, as may be approved by the committee. The committee may request the attendance of one or more alternates at any or all meetings notwithstanding the expected or actual presence of the respective members, and may pay the expenses of such alternates.

§ 968.32 Annual report.

The committee shall, as soon as is practicable after the close of each fiscal period, prepare and mail an annual report to the Secretary and make a copy available to each producer and handler who requests a copy of the report.

Expenses and Assessments

§ 968.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 968.41, and from such other funds which may accrue to the committee as authorized in this subpart.

§ 968.41 Assessments.

(a) *Requirements for Payment.* Each person who first handles cucumbers shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of the committee's expenses. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary multiplied by the quantity of cucumbers which the handler handled as the first handler thereof. The payment of assessments for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to this subpart, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) *Rate of Assessment.* Assessments may be levied upon handlers at rates established by the Secretary upon the basis of the committee's recommendation or other available information. At any time during or after a given fiscal year, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applied to all cucumbers which were handled during the applicable fiscal year.

(c) *Advance Assessments and Authority to Borrow.* In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the fiscal year.

§ 968.42 Delinquent assessments.

The committee may impose a late payment or interest charge, or both, on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

§ 968.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, each handler entitled to a proportionate refund of any excess assessments shall be credited at the end of a fiscal period with such refund against the operations of the following fiscal period unless such handler demands repayment thereof, in which event it shall be paid to the handler: *Provided,* That any sum paid by a handler in excess of that handler's pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such handler.

(2) The committee, with the approval of the Secretary, may carry over such excess funds into subsequent fiscal periods as an operating monetary reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's operational expenses. Funds in such reserve shall be available for use by the committee for all expenses authorized pursuant to this subpart.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to any provision of this subpart shall be used solely for the purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may, at any time, require the committee, its members, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible.

(c) Whenever any person ceases to be a member or alternate member of the committee, such person shall account for all receipts and disbursements and deliver all property and funds, together with all books and records in such member's possession, to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of its members, or any other person, to act as a trustee for holding records, funds or any other committee property during periods of suspension of this part, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

Research and Development

§ 968.50 Research and promotion.

(a) The committee may, with the approval of the Secretary, establish or provide for the establishment of production research and marketing research and development projects designed to assist, improve, or promote the production, marketing, distribution, and consumption of cucumbers. In a similar manner any such project may be modified, suspended, or terminated. The expenses of such projects shall be paid from funds collected pursuant to § 968.41 or from voluntary contributions. Voluntary contributions may be accepted by the committee only to pay the expenses of such projects: *Provided,* That

(1) Such contributions shall be free. from any encumbrances by the donors;

(2) The committee shall retain complete control over their use; and

(3) The committee is prohibited from accepting contributions from handlers subject to the order, or any person whose contributions could constitute a conflict of interest.

(b) In recommending marketing research and development projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of cucumbers in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The need for marketing research with respect to any market development activity; and

(4) The anticipated benefits from such projects in relation to their costs.

(c) If the committee should conclude that a program of production or marketing research or market

development should be undertaken or continued in any fiscal period, it shall submit the following for the approval of the Secretary:

(1) Its recommendations as to funds to be obtained pursuant to § 968.41 or from voluntary contributions;

(2) Its recommendations as to any production or marketing research projects;

(3) Its recommendations as to market development activity; and

(4) Any other information requested by the Secretary.

(d) Upon conclusion of each project, and at least annually, the committee shall report the results of the projects to the Secretary, producers and handlers.

§ 968.51 Patents, copyrights, inventions, trademarks, and publications.

(a) Any patents, plant materials, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this part shall be the property of the U.S. Government as represented by the committee.

(b) Funds generated by such patents, plant materials, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the committee.

(c) Upon termination of this subpart, the committee shall transfer custody of all patents, plant materials, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided in § 968.84 of this subpart.

Regulation

§ 968.60 Marketing policy.

Each fiscal period prior to or simultaneous with making any recommendations pursuant to § 968.61, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Such marketing policy report shall contain information relative to:

(a) The estimated total production of cucumbers within the production area;

(b) The expected general quality and size of cucumbers in the production area and in other areas;

(c) The expected demand conditions for cucumbers in different market outlets;

(d) The expected shipments of cucumbers produced in the production area and in areas outside the production area;

(e) Supplies of competing commodities;

(f) Trend and level of consumer income;

(g) Other factors having a bearing on the marketing of cucumbers; and

(h) The type of regulations expected to be recommended during the fiscal period.

§ 968.61 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of cucumbers in the manner provided in §§ 968.62, 968.63 or 968.64 it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information including but not limited to the factors affecting the supply and demand for cucumbers during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request, including the following:

(1) A clear definition of the problem;

(2) The conditions that led to the problem;

(3) How the recommendation will address or correct the problem;

(4) Whether there are viable alternatives to address the problem;

(5) What the expected results of the regulation would be; and

(6) An assessment of impact on small business.

§ 968.62 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cucumbers whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the Act. Such regulations may:

(1) Limit, during any period or periods, the handling of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of cucumbers grown in the production area.

(2) Limit the handling of cucumbers by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level.

(3) Fix the size, capacity, weight, materials, dimensions, markings, or pack of the container, or containers, or coverings which may be used in the packaging or handling of cucumbers.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 968.63 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 968.62 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of cucumbers in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner, the Secretary may terminate any such modification or suspension.

§ 968.64 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of § 968.41, § 968.62, § 968.63, and § 968.65, and the regulations issued thereunder, handle cucumbers:

(1) For consumption by charitable institutions;

(2) For distribution by relief agencies; or

(3) For commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may modify or relieve from any or all requirements, under or established pursuant to § 968.41, § 968.62, § 968.63, or § 968.65, the handling of cucumbers:

(1) To designated market areas;

(2) For such specified purposes as, but not limited to:

(i) Sales or deliveries of cucumbers by a producer to a handler within any area,

(ii) Sales by the producer to the final consumer and not for resale;

(iii) Sales by the producer to food service establishments;

(iv) Packaging cucumbers for others;

(v) Receipts, sales, or shipments of cucumbers already handled by another person; and

(vi) Shipments for research and development projects, as may be designated by the committee, with the approval of the Secretary; or,

(3) In such minimum quantities as may be prescribed.

(c) The committee may, with the approval of the Secretary, prescribe such rules and regulations as it may deem necessary to prevent cucumbers handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules and regulations may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle cucumbers pursuant to this section, and that such applications be accompanied by a certification by the purchaser or receiver that the cucumbers were not used for any purpose not authorized by this section.

§ 968.65 Inspection and certification.

(a) Whenever the handling of any variety of cucumbers is regulated pursuant to § 968.62 or § 968.63 no handler shall handle cucumbers unless cucumbers are inspected by an authorized representative of the Federal or Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements under §§ 968.64, 968.65 or 968.66.

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom.

(c) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(d) When cucumbers are inspected pursuant to the requirements of this section, each handler shall promptly submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such cucumbers.

(e) The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not practicable: *Provided*, That all shipments made under such waiver shall comply with all other regulations in effect.

(f) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

§ 968.66 Minimum quantities.

The committee, with the approval of the Secretary, may establish minimum quantities below which handling will be free from regulations issued or effective pursuant to § 968.41, § 968.62, § 968.64, § 968.65, or any combination thereof.

Reports and Recordkeeping

§ 968.70 Reports and records.

(a) Each handler shall furnish to the committee, at such times and for periods as the committee may designate, with the approval of the Secretary, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of cucumbers as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the cucumbers;

(6) The destination; and

(7) Identification of the inspection certificate or waiver pursuant to which the cucumbers were handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the cucumber received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

(e) For the purpose of checking and verifying reports filed by handlers' the Secretary and the committee, through duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any cucumbers held by such handler, and any and all records of the handler with respect to the handler's acquisition, sales, uses and shipments of cucumbers. Each handler shall furnish all labor and equipment necessary to make such inspections.

Compliance

§ 968.80 Compliance.

No person shall handle cucumbers except in conformity with the provisions of this part.

Miscellaneous Provisions

§ 968.82 Right of the Secretary.

The members of the committee (including successors and alternates), and any employees or agents thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 968.83 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c)(1) The Secretary shall terminate, in accordance with Section 8(c)(16)B of the Act, the provisions of this order at the end of any fiscal period in which the Secretary has found by referendum or otherwise that such termination is favored by a majority of the producers, who during a representative period as

determined by the Secretary, have been engaged in the production of cucumbers for market: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such cucumbers produced for market, and that such termination shall be effective only if announced on or before the end of the then current fiscal period.

(2) The Secretary shall conduct a continuance referendum every fifth fiscal period with the first such referendum to be conducted within five years from the effective date of this subpart, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of cucumbers in the production area. Such termination of the order shall be effective only if announced on or before the end of the then current fiscal period.

(d) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 968.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee members shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary.

(2) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and

(3) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 968.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or

(b) Release or extinguish any violation of this part or of any regulation issued under this part, or

(c) Affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 968.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 968.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 968.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or the United States

(a) To exercise any powers granted by the act or otherwise, or

(b) In accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 968.89 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 968.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 968.91 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

§ 968.97 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 968.98 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 968.99 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of cucumbers in the same manner as is provided for in the agreement.

Dated: September 29, 1989.

Daniel Haley,

Administrator.

[FR Doc. 89-23737 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1948

Intermediary Relending Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration is proposing to amend the regulations for the Intermediary Relending Program (IRP). This action is needed to correct miscellaneous minor problems that have been observed during initial implementation of the program. The intended effect is to help to distribute limited funds among applicants in a more equitable manner and allow loan processing to proceed more smoothly.

DATES: Comments must be received on or before November 13, 1989.

ADDRESSES: Submit written comments in duplicate to the Chief, Directives and Forms Management Branch, Farmers Home Administration, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Farmers Home Administration, USDA, Room 6327, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 475-3819.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program will be listed in the Catalog of Federal Domestic Assistance under number 10.439. It is subject to intergovernmental consultation in accordance with Executive Order 12372, and as stated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Environmental Impact Statement

This proposed action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Background

The Intermediary Relending Program was placed in operation on August 15, 1988, when the regulations were published as a final rule in the **Federal Register** (53FR30643). FmHA now proposes to make some revisions, based on its experience with implementation of the program, to enhance the program. The primary changes proposed include the following:

1. The limitation on maximum loans to one intermediary is reduced from $3 million to $2 million.
2. The limitation on maximum loans to one intermediary and the limitation on maximum loans to one ultimate recipient are revised to limit IRP loans only, rather than all FmHA loans.
3. The requirements for financial projections from applicant intermediaries are revised to clarify that there should be one set of projections for the intermediary relending fund alone and another set of projections for all of the intermediary's operations combined.
4. New loan priorities are provided, with a point system for establishing a priority score. Items to be considered in awarding points include non-Federal funding to supplement the IRP funds, low income service areas, high unemployment service areas, jobs for low income people, intermediary contribution to the IRP revolving funds, lending experience of the intermediaries and local community representation in the intermediaries.
5. The previous time limitations for application processing are removed and applications will be reviewed and ranked quarterly.
6. The discontinuing of loan processing due to failure of the applicant to meet conditions promptly will be a matter of FmHA discretion, rather than automatic.
7. A requirement is added for post closing review by the Office of the General Counsel (OGC).
8. A requirement for intermediaries to report opportunities provided to farm families is removed.

List of Subjects in 7 CFR part 1948

Business and industry, Community development, Community facilities, Loan programs—business, Loan programs—housing and community development, Rural areas.

Accordingly, Title 7, Chapter XVIII, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1948—RURAL DEVELOPMENT

1. The authority citation for Part 1948 continues to read as follows:

Authority: 7 U.S.C. 1932 note; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Intermediary Relending Program (IRP)

§ 1948.101 [Amended]

2. Section 1948.101 is amended by deleting the last sentence of paragraph (b).

3. Section 1948.103 is amended by revising paragraph (c)(4) to read as follows:

§ 1948.103 Eligibility requirements.

* * * * *

(c) * * *

(4) The total amount of FmHA loan funds requested by the intermediary plus the outstanding balance of existing IRP loan(s) will not exceed $2,000,000 per intermediary.

* * * * *

4. Section 1948.110 is amended by revising paragraphs (a)(7) and (a)(9) to read as follows:

§ 1948.110 Ineligible loan purposes.

(a) * * *

(7) For a loan to an ultimate recipient which has an application pending or has received a loan from another intermediary unless FmHA provides prior written approval for such loan.

(8) * * *

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of FmHA loan funds requested by the ultimate recipients plus the total outstanding balance of any existing loans from IRP funds will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided by FmHA.

* * * * *

5. Section 1948.118 is amended by revising paragraph (b)(4)(iii) to read as follows:

§ 1948.118 Loan agreements between FmHA and the intermediary.

* * * * *

(b) * * *

(4) * * *

(iii) An annual report on the extent to which increased employment, income and ownership opportunitites are provided to low-income persons, for each loan made by such intermediary.

* * * * *

6. Section 1948.122 is amended by revising paragraph (f) to read as follows:

§ 1948.122 Application.

* * * * *

(f) A pro forma balance sheet at startup and for at least 3 additional projected years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP fund only and a separate set of projections that shows the applicant organization's total operations.

* * * * *

7. Section 1948.123 is amended by revising paragraphs (b) and (c) and removing paragraph (d), to read as follows:

§ 1948.123 Filing and processing applications for loans.

(a) * * *

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by FmHA will be reviewed and ranked quarterly and funded in the order of priority ranking. At the intermediary's direction FmHA may retain unsuccessful applications for consideration in subsequent reviews in the same fiscal year.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries based on the following factors. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of FmHA, provide assurance that the items have a high probability to be accomplished. The points awarded will be as specified in each paragraph or subparagraph. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph should be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—10 points.
(B) At least 25% but less than 50% of the total project cost—20 points.
(C) 50% or more of the total project cost—30 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-FmHA derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project cost—10 points.
(B) At least 25% but less than 50% of the total project cost—20 points.
(C) 50% or more of the total project cost—30 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in consumer price index (CPIU). The poverty line used will be as defined in Section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902 (2)). Unemployment data used will be that published by The Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of 4:

(A) At least 100% but less than 110%—5 points.
(B) At least 80% but less than 100%—10 points.
(C) Below 80%—15 points.

(ii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points.
(B) At least 125% but less than 150%—10 points.
(C) 150% or more—15 points.

(iii) The intermediary will require as a condition of eligibility for a loan to an ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

(A) At least 10% but less than 20% of the workforce—5 points.
(B) At least 20% but less than 30% of the workforce—10 points.
(C) 30% of the workforce or more—15 points.

(3) *Equity.* All assets of the IRP fund will serve as security for the IRP loan and the intermediary will contribute funds not derived from FmHA into the IRP fund along with the proceeds of the IRP loan. The amount of non-FmHA derived funds contributed to the IRP fund will equal the following percentage of the FmHA IRP loan:

(i) At least 5% but less than 15%—15 points.
(ii) At least 15% but less than 25%—30 points.
(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points.
(ii) At least 3 but less than 5 years—10 points.
(iii) At least 5 but less than 10 years—20 points.
(iv) 10 or more years—30 points.

(5) *Community Representation.* The service area is not more than 10 counties and the intermediary utilizes local opinions and experience by including community representatives on its Board of Directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives or bankers, who reside in the service area and are not employees of the intermediary.

(i) At least 10 percent but less than 40 percent of the board members are community representatives—5 points.
(ii) At least 40 percent but less than 75 percent of the board members are community representatives—10 points.
(iii) At least 75 percent of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters. An assignment of points by the Administrator will be by memorandum stating the Administrator's reasons, and that memorandum will be appended to the calculation of the project score maintained in the case file.

8. Section 1948.124 is amended by revising paragraph (c)(2) to read as follows:

§ 1948.124 FmHA evaluation of application.

* * * * *

(c) * * *

(2) The letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to

the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project or intermediary, including equal opportunity and nondiscrimination policy, must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discountinuing process of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

The intermediary must certify at loan closing that since FmHA's issuance of the letter of conditions there has been no material adverse change(s) in its financial condition nor any other material adverse change in the intermediary.

The loan will be considered approved on the day a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you.

Please complete and return the attached Form FmHA 442-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA reserves the right to discontinue the processing of the application. The intermediary will be notified, in writing, by the Administrator or designee of any such discontinuance.

* * * * *

9. Section 1948.126 is amended by adding a new paragraph (f) to read as follows:

§ 1948.126 Loan closing.

* * * * *

(f) When the loan has been closed, the administrator or designee will submit the security instruments, other documents used in closing, and a statement that administrative requirements have been met to the Regional Attorney. The Regional Attorney will review the submitted material and determine whether all legal requirements have been met.

10. Section 1948.149 is amended by adding paragraph (d) to read as follows:

§ 1948.149 Exhibits.

* * * * *

(d) Exhibit IV, "Priority Scoresheet"

Dated: September 22, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-23840 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 310, 314, and 320

[Docket No. 85N-0214]

RIN 0905-AB63

Abbreviated New Drug Application Regulations; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to January 9, 1990. The comment period for the proposed rule to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which amends section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) (July 10, 1989 (54 FR 28872)). The proposal provides for the submission of abbreviated new drug applications for generic versions of drug products.

DATE: Comments by January 9, 1990.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Watson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8038.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 10, 1989 (54 FR 28872), FDA issued a proposed rule to implement Title I of the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417), which amends section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). The proposal provides for the submission of abbreviated new drug applications for generic versions of drug products. These new provisions are intended to benefit consumers by making generic drug products available more quickly. The proposal gave interested persons an opportunity to submit written comments for 90 days (by October 10, 1989).

In response to the proposal, the Generic Pharmaceutical Industry Association has requested a 30- to 60-day extension of the comment period, the National Association of Pharmaceutical Manufacturers has requested a 60-day extension and Parke-Davis has requested a 120-day extension. These organizations requested additional time to adequately respond to the proposal because of its extraordinary length and because of complex issues and questions that need careful analysis and evaluation. FDA has carefully considered the request and has determined that a 90-day extension to the comment period for the preparation and submission of meaningful comments to a very detailed and complex proposed rule is in the public interest. A longer extension is not warranted because the proposal provided an extended comment period and because many of the procedures contained in the proposal were made available by FDA in a series of letters offering interim guidance to new drug application and abbreviated new drug application holders and applicants. Accordingly, the comment period for submissions by any interested person is extended to January 9, 1990.

Interested persons may, on or before January 9, 1990, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 6, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-24030 Filed 10-6-89; 11:31 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM609VA; FRL-3670-7]

Approval of Revisions to the Virginia State Implementation Plan With Regard to Regulations for Aluminum Rolling Mill Operations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On December 17, 1987, Virginia submitted a request to EPA to add Reasonably Available Control Technology (RACT) requirements, in the form of Consent Orders, for major sources (>100 tons of volatile organic compounds (VOC) per year) in the Richmond ozone nonattainment area for which EPA has not published a Control

Technique Guideline (CTG). These major non-CTG sources were previously identified by Virginia in accordance with EPA's requirements for areas unable to attain the ozone National Ambient Air Quality Standard (NAAQS) by December 31, 1982. EPA required, in post-82 nonattainment areas, that RACT regulations must be adopted and implemented for non-CTG sources emitting ≥100 TPY VOC emissions. Virginia's December 17, 1987 submittal requested EPA's approval of requirements for aluminum rolling mills (pertaining to Reynolds Metals-Foil Plant), tobacco processing (pertaining to Philip Morris) and synthetic fiber manufacture (pertaining to DuPont Company's Nomex fiber process). This Notice will only address the proposed approval of requirements for aluminum rolling mills. The regulations for tobacco processing and synthetic fiber manufacture will be addressed in separate Notices.

This Notice proposes approval of the non-CTG RACT requirements for aluminum rolling mills for Reynolds Metals-Foil Plant in Richmond, VA. This proposed approval is based on a determination that this requirement represents RACT for this source category.

DATES: Comments must be submitted on or before November 13, 1989.

ADDRESSES: Copies of this document and accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107.

Virginia Department of Air Pollution Control, Room 801, Ninth Street Office Building, P.O. Box 10089, Richmond, VA 23240.

All comments on the proposed revision submitted within 30 days of this Notice will be considered and should be addressed to Mr. David L. Arnold, Chief, Program Planning Section, at the above EPA Region III address. Please reference the EPA docket number found in the heading of this Notice.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: On December 17, 1987, Virginia submitted a request to EPA to add RACT requirements, in the form of Consent Orders, applicable to aluminum rolling mills, tobacco processing and synthetic fiber manufacturing. As mentioned earlier, the requirements for tobacco processing and synthetic fiber manufacturing will be addressed in separate Notices. The RACT requirements pertaining to aluminum rolling mills are applicable to Reynolds Metals-Foil Plant, located in Richmond, VA. The Richmond ozone nonattainment area, which currently includes Richmond City, and Chesterfield and Henrico Counties, received a State Implementation Plan (SIP) call on September 28, 1984. A SIP call is a finding made by EPA under section 110(a)(2)(H) of the Clean Air Act that the State's plan for attainment and maintenance of the NAAQS is substantially inadequate to attain and maintain that standard. Virginia was required to submit, as part of its compliance with the SIP call, RACT requirements for any non-CTG sources which have the potential to emit ≥100 TPY VOC emissions. One of the sources which Virginia identified is the Reynolds Metals-Foil Plant. This is the only source in the Richmond nonattainment area which has been identified in the aluminum rolling source category and is the only source which will be affected by the adoption of the aluminum rolling mills requirements.

The aluminum rolling mills requirement is in the form of a Consent Order for the Reynolds Metals-Foil Plant, dated December 21, 1987, and requires the Company to use a normal paraffin lubricant containing a minimum of 88 percent saturated aliphatic compounds or carbon range of C12 and above. Compliance is determined by a gas chromatograph analysis of a grab sample taken at any rolling mill at the plant and compared to a copy of a gas chromatograph submitted to Virginia and incorporated as part of this Order. In addition, the temperature of the normal paraffin lubricant is required to be controlled and maintained at or below 150 °F. Recordkeeping by the Company is required in order to show that the lubricant temperature is maintained daily and that the gas chromatograph analysis of the lubricant is performed each month. These records are required to be maintained for two years. The Reynolds Metals-Foil Plant had previously been using kerosene as a lubricant in its rolling mills. Kerosene is more volatile than the proposed substitute lubricant. Reynolds Metals has conducted its own tests to show that the lubricant substitute will make an acceptable product and has committed to making the change in its process.

While the information provided by Virginia has not excluded carbon adsorption or incineration as RACT for other similar metal rolling operations, EPA believes that the documentation provided by Virginia and Reynolds Metals regarding lubricant substitution sufficiently supports a RACT determination for aluminum rolling at the Reynolds Metals-Foil Plant in Richmond. Carbon adsorption, oil absorption, incineration, and lubricant substitution were all shown to be technically and economically feasible. The cost per ton VOC removed among the four control options varied by a factor of 10. While this variation in cost did not exclude any of the control options, lubricant substitution would provide the most continuous and dependable control of VOC compared with the other options. Lubricant substitution offers the ability to minimize the VOC emissions of the process at the outset rather than to abate the VOC emissions after it is already produced.

In the cold (temperatures below 100°C) aluminum rolling process, several factors in the choice of the lubricant are important. These include the requirement that the lubricant should have a high specific heat to cool the metal being rolled to the maximum extent, that the heat of vaporization and the flash point are high to minimize evaporation of emissions and fires, respectively, and that the vapor pressure of the lubricant should be low to minimize emissions. With regard to lowering VOC emissions, only the vapor pressure and heat of vaporization of the proposed lubricant substitute (C_{12} or greater normal paraffin (high-purity linear paraffin)) directly indicate the advantage of using the paraffin versus using kerosene. The vapor pressure of a compound is the pressure of its aqueous vapor over water in millimeters of mercury (Hg). The higher the vapor pressure, the more volatile the compound and the more VOC emissions it generates. When kerosene is used in aluminum rolling, the temperature at which the metal is rolled is 180°F. At this temperature, the vapor pressure of kerosene is 20 mm Hg. When a C_{12} normal paraffin is used in aluminum rolling, the temperature at which the metal is rolled is 150°F. At this temperature, the vapor pressure of the C_{12} normal paraffin is 8 mm Hg. The heat of vaporization is the amount of heat needed to change one gram of the liquid compound to vapor without changing the temperature. The higher the heat of vaporization, the more heat it

takes to change the liquid compound to vapor at the same temperature. The heat of vaporization is 139 Btu/lb for a high-purity linear paraffin compared with 110 Btu/lb for kerosene. The other properties of the proposed lubricant substitute illustrate why this lubricant substitute will work in the aluminum rolling process. These other properties are the specific heat and the flash point of the compound. The specific heat of a compound is the amount of heat that a compound can hold compared with water at 15°C. A compound with a higher specific heat than another compound has more heat capacity than that other compound. The specific heat of a high-purity linear paraffin is 0.55 Btu/lb-°F compared with 0.50 Btu/lb-°F for kerosene. The flash point of a compound is the temperature at which a compound ignites. The higher the flash point of a compound, the greater degree of safety is provided. The flash points of C_{12}–C_{15} normal paraffins range for from 156°F for a C_{12} normal paraffin to 244°F for a C_{15} normal paraffin compared with 130°F for kerosene. The amount of VOC emissions reduced due to the substitution of the C_{12} paraffin for the kerosene lubricant is estimated at 10–50%.

Using lubricant substitution as the emission control method provides an added advantage not available if add-on control devices are chosen as the method of control. Any add-on control device's emission control efficiency must be determined by knowing both the capture efficiency and the destruction efficiency. Capture efficiency is the amount of emissions which are delivered to the control device divided by the total amount of emissions entering the system (e.g., coating line). Destruction efficiency is the amount of emissions destroyed by the control device divided by the amount of emissions entering that control device. The overall control efficiency of the add-on control device is calculated by multiplying the capture and destruction efficiencies. The capture and destruction efficiencies in any system must be determined by actual testing in the system because there are many variables which influence the final result. This is particularly true of capture efficiency. Determining actual capture efficiency involves the construction of a temporary or permanent enclosure around the system and determining such factors as air flow rates, among other variables. Estimates for an adsorption system have been made and an overall control efficiency of 63%, with an assumed capture efficiency of 70% and a removal efficiency of 90%, might be expected. This 63% control efficiency uses an assumed capture efficiency which would not be acceptable for a source to use when determining compliance. Therefore, the use of a control method which lowers VOC emissions by preventing the generation of those emissions provides the added advantage of not having to test for and determine capture and destruction efficiencies. Consequently, EPA is proposing that lubricant substitution as stipulated by the Consent Order for Reynolds Metals-Foil Plant in Richmond, Virginia, dated December 21, 1987, represents RACT for this aluminum rolling source.

Conclusion: EPA's decision to propose approval of the SIP revision regarding non-CTG regulations for aluminum rolling mill operations is based on a determination that this SIP revision is consistent with section 110 and part D of the Clean Air Act.

The public is invited to submit comments, to the Region III address above, on whether or not this revision should be approved.

Under 5 U.S.C. 605(b), I certify that this action will not have a significant impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control Hydrocarbons, Intergovernmental relations, ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 29, 1989.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 89–23964 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6956]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 54 FR 2150 on May 10, 1989. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Unincorporated Areas of Nolan County, Texas.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Unincorporated Areas of Nolan County, previously published at 54 FR 20161 on May 10, 1989, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

On page 20161, in the May 10, 1989 issue of **Federal Register**, the entry under Nolan County (Unincorporated Areas) for Wolf Hollow is correctly revised to read as follows:

Source of Flooding and Location	#Depth in feet above ground. *Elevation in feet (NGVD)
* * * * *	
Wolf Hollow:	
At confluence with Santa Fe Lake	*2,066
At corporate limits	*2,083
* * * * *	

Issued: October 2, 1989.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 89–23949 Filed 10–10–89; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89-18; Notice 2]

RIN 2127-AC38

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials, to permit three new items of glass-plastic glazing. Item 15, Annealed glass-plastic glazing, is proposed to be used anywhere in a motor vehicle except the windshield. Item 16A, Annealed glass-plastic glazing, and Item 16B, Tempered glass-plastic glazing, are proposed to be used in areas not requisite for driving visibility. These three new items of glazing are less restrictive versions of existing Item 14 glass-plastic glazing, which may be used anywhere in a motor vehicle including the windshield. The agency hopes that with the approval of the three new types of glazing, manufacturers will have greater incentive to utilize glass-plastic glazing in all glazing locations in a motor vehicle. The agency encourages greater use of glass-plastic glazing because of its proven injury-reduction capabilities in crashes. Certain technical changes to Standard 205 are also proposed.

DATES: Comments must be received on or before November 27, 1989. Proposed effective date: If enacted, the final rule would become effective upon issuance.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202 366-4915).

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates, by reference, American National Standard Institute (ANSI) Standard Z26.1, "Safety Code For Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amened through 1980 (Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in the standard.

To ensure the safety performance of vehicle glazing, FMVSS 205 includes a total of 31 specific tests. Each item of glazing is subjected to a selected group of these tests appropriate for that material. It is the particular combination of tests that dictates the requisite properties of a particular item of glazing, and where in a motor vehicle it may be utilized. For example, three-ply laminated windshield glazing, Item 1, to be used anywhere in a vehicle including the windshield, is subjected to 9 tests.

Item 14 (glass-plastic glazing) was added to FMVSS No. 205 by NHTSA in 1983 (See 48 FR 52061), without limitation as to the location of its use in a motor vehicle. Item 14 glazing was anticipated to be used primarily in vehicle windshields. In adding Item 14, the agency anticipated that this type of glazing would consist of laminated glass to which a plastic layer was added on the inside surface, facing the interior of the vehicle. However, the item may be manufactured with or without laminated glass. For example, it could consist of the current high penetration resistant (HPR) three-ply glazing to which one or more layers of plastic have been added to create a windshield of four or more plies. Alternatively, Item 14 glazing could simply be two-ply, consisting of a single sheet of glass to which a layer of plastic has been added to the inside surface.

Currently, Item 14 is the only category of glass-plastic glazing allowed. In order to be used anywhere in a motor vehicle, glass-plastic material must meet all the test requirements of Item 14 glazing. These tests include: Test 1- Light stability, Test 2- Luminous transmittance, Test 3- Humidity, Test 4- Boil test, Test 9- Dart impact, Test 12- Ball impact, Test 15- Optical deviation and visibility distortion, Test 16- Weathering, Test 17- Abrasion resistance (plastics), Test 18- Abrasion resistance (glass), Text 19- Chemical resistance, Test 24- Flammability, Test 26- Penetration resistance, and Test 28- Resistance to temperature change. Therefore, designers intending to use glass-plastic glazing in an area not requisite for driving visibility would have to use Item 14 glazing, even though the visibility and penetration resistance requirements for Item 14 exceeded the safety requirements for the glazing area.

Although there are currently no items of glass-plastic glazing allowed only in areas other than the windshield, there are two main items of glazing allowed for use in these areas. Item 2 glazing may be used anywhere in a motor vehicle except windshields. The windows to the left and right of the driver in all vehicles and rearward windows in passenger cars can be made of Item 2 glazing. Item 3 glazing may be used anywhere in a motor vehicle except windshields and other areas requisite for driving visibility. Item 3 is used as side-facing rearward windows of light trucks, vans, and multipurpose passenger vehicles and also for sun roofs and T-tops. Both Items 2 and 3 may be manufactured in one of four types of construction: laminated glass, tempered glass, and 2 classes of multiple glazing units. The primary difference between Item 2 and Item 3 glazing is that Item 3 does not have any luminous transmittance requirements.

By letter dated August 11, 1987, the Taliq Corporation (petitioner), petitioned the agency to amend Standard 205 by creating a category of glass-plastic glazing without the visibility requirements or the stringent anti-penetration requirements of Item 14. Specifically, the petitioner requested that the agency create a new category, to be called Item 15, which would be a glass-plastic version of Item 3, which could be used anywhere in a motor vehicle except for the windshield and other areas requisite for driving visibility. The agency has granted this petition and in this notice of proposed rulemaking will expand upon petitioner's request. The agency proposes to create three new items of glass-plastic glazing, to be used in the same locations in vehicles that are currently allowed for Items 2 and 3. Rather than the item-numbering system proposed in the petition, the agency proposes to designate the two glass-plastic versions of Item 3 as Items 16A and 16B, to designate a glass-plastic version of Item 2 as Item 15. This would keep the two types of glazing in the same numerical order as Items 2 and 3,

based on locations in motor vehicles were these items of glazing may be placed.

II. Need for Items 15, 16A, and 16B

The agency initially permitted the use of Item 14 glass-plastic glazing in motor vehicle windshields because glass/plastic glazing can potentially reduce by two thirds the number of lacerative injuries resulting from passenger contact with windshields in crashes. At the time glass-plastic glazing was approved, the agency believed that laminated glass-plastic eventually might fill all vehicle glazing needs, including front, side and rear locations. Initially, various manufacturers, such as Porsche and General Motors (GM), took advantage of the rule change and provided four or five-ply glass plastic glazing in the windshields of some of their automobile models. However, the user of the largest amount of glass-plastic glazing, GM, decided to discontinue use of the glazing after the 1987 model year because of warranty problems and consumer allegations that the plastic inner layer was too easily scratched.

Subsequently, designers have created prototypes for two-ply glass-plastic side windows for a variety of purposes. NHTSA has tested tempered two-ply glass-plastic for the purpose of ejection mitigation through side-door windows. The Taliq Corporation has combined liquid crystal technology with the glass-plastic concept and developed two-ply glazing that can electronically switch the amount of light transmissibility through the glazing between opaque and "transparent." Be requiring all glass-plastic to conform to the test requirements for Item 14, FMVSS 205 hinders design flexibility. Vehicle manufacturers intending to use glass-plastic in areas not requisite for driving visibility, must still comply with the optical quality test requirement. Item 14 glass-plastic also requires penetration resistance beyond the level needed for side and rear glazing.

By permitting these new items of glazing, the agency hopes manufacturers would be encouraged to use glass-plastic glazing at locations other than the windshield in motor vehicles. Greater use of glass-plastic at side and rear locations would result in ejection mitigation and laceration reduction, in the event of crashes. In the Side Impact Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 31712 and 31716, August 19, 1988), the agency discussed adding a plastic layer to existing glazing as a means of reducing ejections. That rulemaking estimated 2160 side window ejection fatalities in 1990. The agency estimates that overall, ejection quadruples an occupant's chance of fatal injury. In a rollover, it increases an occupant's chances of severe injury by a factor of 8.4. In a nonrollover crash, the chances of injury are 9.4 times greater. Glass-plastic glazing will also protect vehicle occupants from flying pieces of glass.

The type of glass utilized in glass-plastic glazing may also have a significant effect on safety and visibility. There are basically two types of glass that are used in motor vehicle glazing—annealed glass and tempered glass. The difference between annealed and tempered glass arises during the production process, when the glass that goes into motor vehicle glazing is formed into sheets. In the final process, the glass is either reheated and cooled slowly, creating "annealed" glass or is toughened thermally or chemically, creating "tempered" glass. Tempered glass, when broken, shatters into small, generally granular pieces, an effect called dicing, rather than large shards. The safety feature of tempered glass is that, when broken, it produces no large, sharp pieces. The design advantage is that it is stronger, requiring less material for the same level of strength. However, when shattered, the dicing effect of tempered glass in glass-plastic glazing tends to obstruct vision, since the plastic tends to hold the diced pieces in place. This adversely affects safety when used in windows that are requisite for driving visibility.

"Laminated glass" consists of one or more sheets of glass held together by an intervening layer or layers of plastic. The glass will crack and break under sufficient load, but the pieces of glass tend to adhere to the plastic. When broken, the edges are likely to be less jagged than would be the case with ordinary glass. Plastic is laminated with annealed glass to retain control of the large sharp pieces that occur when this type of glass breaks. Laminated glass is most typically used in motor vehicle windshields. Item 1 glazing, to be used anywhere in a motor vehicle, is made up of two sheets of annealed glass with a layer of plastic in between, forming laminated glass. Item 14 laminated glass-plastic glazing may be four or five layers (plies), consisting of two sheets of glazing with an intermediate layer of plastic plus one or two inner layers of plastic facing the inside of the vehicle.

The Taliq Corporation's petition for a glass-plastic version of Item 3 laminate did not specify whether the glass utilized was to be annealed or tempered. When asked to clarify its petition, Taliq could not definitively answer which type of glass was to be used. However, Taliq had dealt with several automotive companies on the design of the proposed glass-plastic. There were prototypes constructed of annealed glass, and the production units constructed of tempered glass-plastic. To allow both types of glass-plastic glazing, annealed and tempered, in areas not requisite for driving visibility, the agency proposes two new categories: Item 16A, annealed glass-plastic and Item 16B, tempered glass-plastic. These materials should fulfill the needs of the Taliq petition and the general needs of future designers.

Along with the proposal that tempered glass-plastic not be allowed in glazing areas requisite for driving visibility (i.e., no Item 15 Tempered), the agency requests comment on a reasonable method of defining "tempered" glass-plastic. Several options have been considered. First, a fragmentation test may prove the tested glazing is partially or highly tempered, if glass dicing occurs. Second, Test 9, the dart impact test may discriminate against tempered glass, for it may not easily pass this test. Third, since tempered glass is stronger than annealed glass, there may be a strength test that will discriminate between tempered and annealed glass. Fourth, and least feasible, tempered glass may be defined as having internal stress greater than 10,000 pounds per square inch. Theoretically, measuring this pressure could define whether the glass is tempered. Comments on each of these suggested approaches, and any others defining "tempered" glass-plastic, is requested.

In a companion notice of proposed rulemaking, issued in today's Federal Register, the agency has also proposed to amend Standard 205 by prohibiting certain uses of tempered glass plastic. Proposed as new Section S5.1.2.6, the wording is: "Glass that is strengthened by any method may not be used in glass-plastic glazing in any windshield or other location requisite for driving visibility."

In summary, this notice proposes to create a glass-plastic version of Item 2 glazing, and two glass-plastic versions of Item 3 glazing. The new glass-plastic designated as Item 15–Annealed Glass-Plastic, would meet the same requirements as Item 2, with the addition of requirements applicable to plastics. The agency proposes that new Item 15 be permitted for use in the locations specified for Item 2, that is, in all locations except the windshield. The agency does *not* propose a tempered version of Item 15, because of the potential visibility problems noted previously. Public comment is solicited on whether the agency should allow

tempered glass to be used in glass-plastic glazing in areas requisite for driving visibility. In particular, comment is sought on whether the extra protection offered by tempered glass in side-impact situations would outweigh visibility impairment created when tempered glass fragments are held in position on the plastic layer, blocking the driver's sideward vision. Comment is also sought on whether prohibition of tempered glass-plastic glazing would unnecessarily hinder innovation or design flexibility.

The agency also proposes that Items 16A—Annealed Glass-Plastic and 16B—Tempered Glass-Plastic be allowed in the locations specified for Item 3, that is, in all locations not requisite for driving visibility. Both annealed and tempered glazing would be allowed for Item 16 since laminated tempered glass-plastic would not present a visibility problem upon breakage in areas not requisite for driving visibility.

III. Proposed Rulemaking for New Items of Glass-Plastic Glazing

A. Creation of Item 15—Annealed Glass-Plastic

The agency proposes to create performance specifications for Item 15—Annealed Glass-Plastic by adopting the tests for Item 2 and adding the tests from Item 14 that are applicable to the interior, plastic side of the glazing. This philosophy was successfully used in the creation of the first category of glass-plastic, Item 14. The agency has considered the stated purpose of each test; whether its use is appropriate, given the material to be tested and the uses to which the material will be put; and whether it has safety benefits. The agency proposes permitting only one material within Item 15: Annealed glass-plastic.

The tests recommended for Item 15 Annealed Glass-Plastic consist of all of the current tests for Item 2 plus the applicable tests for the plastic side of Item 14, as follow:

Test 1 Light stability
Test 2 Luminous transmittance
Test 3 Humidity
Test 4 Boil
Test 9 7 oz. Dart Impact from 30 ft.
Test 12 8 oz. Ball Impact from 30 ft.
Test 16 Weathering
Test 17 Abrasion resistance (plastics)
Test 18 Abrasion resistance (glass)
Test 19 Chemical resistance
Test 24 Flammability
Test 28 Temperature change

The agency believes that the proposed Item 15 glazing will have several desirable features. It will provide vision quality sufficient for side and rearward viewing, protection from laceration, adequate strength, and long-term stability.

B. Creation of Item 16A—Annealed Glass-Plastic

The agency proposes to create performance specifications for Item 16A—Annealed Glass-Plastic by adopting the tests for Item 3 Laminated and adding the tests from Item 14 that are applicable to the interior (plastic) side of the glazing. Item 3 and the proposed Item 16 glazing have no need for any measurements of optical quality since they are permitted for use only in locations not requisite for driver visibility. Item 3 currently requires Test 1, light stability. This has no apparent safety need, but has never been deleted. The agency proposes that Test 1 for Item 3 be deleted and that only those tests that relate to the physical properties plus flammability be applied to Item 16A.

The following tests would be applicable to Item 16A—Annealed Glass-Plastic:

Test 3 Humidity
Test 4 Boil
Test 9 7 oz. Dart Impact from 30 ft.
Test 12 8 oz. Ball Impact from 30 ft.
Test 16 Weathering
Test 19 Chemical resistance
Test 24 Flammability
Test 28 Temperature change

C. Creation of Item 16B—Tempered Glass-Plastic

The agency proposes creating performance specifications for Item 16B—Tempered Glass-Plastic. Item 16B is proposed to be differentiated from laminated glass by the drop tests for tempered glass. The agency believes it is necessary to use the tests designed for tempered glass, to assure that the glazing has at least minimum ability to resist impact by a large yielding object. Proposed Item 16B glazing has no safety need for any measurements of optical quality. Therefore, it is proposed that Item 16B—Tempered Glass-Plastic be subjected to the following tests:

Test 3 Humidity
Test 4 Boil
Test 6 8 oz. Ball Impact from 10 feet
Test 8 Shot bag Impact from 8 feet
Test 16 Weathering
Test 19 Chemical resistance
Test 24 Flammability
Test 28 Temperature change

IV. Additional Proposals

A. Deletion of Test 1, Luminous Transmittance, for Item 3

Test 1 is currently required for Item 3 glazing. The test, as indicated earlier, is intended to measure the reduction of luminous transmittance after the material is exposed to simulated sunlight and moisture. The agency sees no safety need to include this requirement for Item 3 glazing, since that glazing is permitted for use only in areas not requisite for driving visibility. Therefore, the agency proposes deleting this requirement for Item 3.

B. Modification of Fragment Size in Test 7, Fracture

Currently, Test 7 measures the fragment size of tempered glass after it has been fractured. FMVSS 205 currently allows fragments weighing up to 0.15 ounce. There is no restriction on the size or shape of the fragment. The agency has been advised that tempered glass can break into long, thin needles. A typical shape can be a pointed 7.5 *cm* by 2 *mm* fragment. These pieces may weigh less than the required maximum. The agency has already received one report of an injury caused by a narrow piece of tempered glass. The definition of tempered glass in ANS Z26 describes the proper failure mode of the glass as "granular, usually with no large jagged edges". But the current measure of fragment weight does not provide a viable test procedure to prevent dangerous, pointed needle-like fragments. Therefore the agency proposes to modify the test requirements to include a maximum length of 2 inches and a maximum length-to-width ratio of 3 to 1.

Domestic glazing manufacturers are currently producing glazing that breaks into small "granular" pieces. Glass that breaks into larger pieces may be poorly tempered. It is believed that proper tempering will routinely produce glazing that breaks as intended by FMVSS 205.

C. Clarification of the Chemical Definition of Gasoline

The chemical test in FMVSS 205 includes submersion in "gasoline". This term is not defined. The composition may vary greatly from refinery to refinery. There is a need to define a substance for enforcement purposes.

In FMVSS 108, "Lamps, Reflective Devices and Associated Equipment," several chemicals, including gasoline, were redefined (53 FR 31007). In that rulemaking, the agency decided to adopt American Society for Testing and Materials (ASTM) reference Fuel C as a definition for gasoline. This liquid consists of 50 percent toluene and 50 percent isooctane. The composition is similar to typical 89 octane unleaded gasoline, but with the elimination of benzene. Benzene is toxic fluid, determined to be a carcinogen. Reference Fuel C is a standard solvent

used for testing the effect of liquids on rubber. An octane number is irrelevant for this use. Aromatic hydrocarbons (which include both toluene and benzene) are the active ingredients of gasoline which are likely to attack plastic materials under exposure. The percentage (by volume) of aromatic hydrocabons in Reference Fuel C corresponds approximately to the maximum percentage found in commercially available unleaded high octane gasoline.

The ASTM Reference Fuel C is specified in ASTM D 471–79, "Standard Test Method for Rubber Property—Effect of Liquids" used as specified in Annex 2 to Motor Fuels Section 1, "Test Methods for Rating Motor, Diesel, Aviation Fuels," *1985 Annual Book of ASTM Standards.*

V. Regulatory Impacts

1. Cost and Other Impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency estimates that the introduction of the new items of glazing would impose no new costs for each of the approximately ten testing companies or laboratories throughout the United States because each item of glazing would utilize tests that are already established in ANS Z26, which these laboratories are equipped to conduct. Public comment is invited on the likely costs and benefits that would be associated with the proposed addition of the three new items of glazing.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would have no significant effect even if all of the approximately ten testing entities for glazing in the United States were small businesses or other small entities (defined in 13 CFR 121.2 under SIC 8734 "Testing Laboratories" as those entities grossing less than $3.5 million a year.). The rationale for this certification is that this proposed rule, if adopted, would introduce no new testing procedures, and the testing entities would not need to buy new equipment to test the new items of glazing.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a fnal rule, it would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidental information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business informaton regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA wll continue to file relevant informaton as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postacard in the envelope with their comments. Upon receiving the comments. The docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideraton of the foregoing, it is proposed that Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), be amended as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. S5.1.1.1(d) would be revised to read as follows:

(d) Gasoline, ASTM Reference Fuel C, which is composed of Isooctane 50 volume percentage and Toluene 50 volume percentage. Isooctane must conform to A2.7 in Annex 2 of the Motor Fuels Section of the *1985 Annual Book of ASIM Standards.* Vol. 05.04, and Toluene must conform to ASTM specification D362–84, *Standard Specification for Industrial Grade Toluene.* ASTM Reference Fuel C must be used as specified in:

(1) Paragraph A2.3.2 and A2.3.3 of Annex 2 of Motor Fuels, Section 1 in the *1985 Annual Book of ASTM Standards;*

(2) OSHA Standard 29 CFR 1910.106—"Handling Storage and Use of Flammable Combustible Liquids."

3. Section S5.1.1.7 would be revised to read as follows: S5.1.1.7 Test No. 17 is deleted from the list of tests specified in ANS Z26 for Item 5 glazing material and Tests Nos. 1 and 18 are deleted from the lists of tests specified in ANS Z26 for Item 3 and Item 9 glazing material.

4. The first sentence of subparagraph S5.1.2.5(a) would be revised to read as follows:

Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.7, S5.1.2.8, or S5.1.2.9 shall affix a label, removable by hand without tools, to each item of such glazing material * * *

5. Subparagraph S5.1.2.5(b) would be revised to read as follows:

(b) Each manufacturer of glazing material designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.7, S5.1.2.8, or S5.1.2.9 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than ¼ inch high, the following words, "GLASS PLASTIC MATERIAL-SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS."

6. The following subparagraph would be added after S5.1.2.6 to read as follows:

S5.1.2.7 *Item 15—Annealed Glass-Plastic For Use in All Positions In A Vehicle, Other Than The Windshield.* Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 9, 12, 16, 17, 18, 19, 24 and 28, may be used anywhere in a motor vehicle except windshields. Tests Nos. 9, 12, 16 and 18 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

7. The following subparagraph would be added after S5.1.2.7 to read as follows:

S5.1.2.8 *Item 16A—Annealed Glass-Plastic For Use In All Positions in A Vehicle Not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 9, 12, 16, 19, 24 and 28, may be used in a motor vehicle in all locations not requisite for driving visibility. Test Nos. 9, 12 and 16 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

8. The following subparagraph would be added after S5.1.2.8 to read as follows:

S5.1.2.9 *Item 16B—Tempered Glass-Plastic For Use In All Positions in A Vehicle Not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 6, 8, 16, 19, 24 and 28, may be used in a motor vehicle in all locations not requisite for driving visibility. Tests Nos. 9, 12 and 16 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

9. A new paragraph S5.3 would be added to read as follows:

S5.3 In addition to the results specified in S5.7.3 of ANS Z26, no individual fragment produced during Test No. 7 shall have an overall length greater than 2 inches or a length-to-width ratio of greater than 3 to 1.

10. The second sentence of Paragraph S6.1 would be revised to read as follows:

S6.1 * * * The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.7, S5.1.2.8 and S5.1.2.9 shall be identified by the marks "AS 11C," "AS 12," "AS 13," "AS 14," "AS 15," "AS 16A" and "AS 16B," respectively.* * * * * * * * *

Issued on: October 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23867 Filed 10-5-89; 9:28 am]

BILLING CODE 4910-59-M

---

49 CFR Part 571

[Docket No. 89-18; Notice 1]

RIN 2127-AC14

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials, to require specimen clamping of Item 14 glass-plastic glazing (glazing with one or more layers of glazing and a layer of plastic on the surface facing the vehicle interior) for Test 26. In Test 26, a 5 pound ball is dropped onto ten individual specimens of glazing to determine whether the glazing material has satisfactory penetration resistance. No clamping is proposed in conducting Test 26 on Item 1 glazing. Item 1 is similar to Item 14, except Item 1 has no plastic layer on the inside surface. Comment is requested on the advisability of extending the clamping procedure to two other drop tests, Test 9 (that determines the behavior of the safety glazing under impact from a small, hard object) and 12 (that determines whether the safety glazing has a certain minimum strength and whether it is properly made), in measuring the performance of Item 14 glazing. The agency also proposes to prohibit tempered glass-plastic glazing in windshields and other locations requisite for driving visibility.

DATES: Comments must be received on or before November 27, 1989. Proposed effective date: If adopted, the new test procedure would be effective upon issuance of the final rule.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8 a.m to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4916.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates by reference, American National Standard Institute (ANSI) standard Z26.1, "Safety Code For Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in the standard.

The standard includes 31 specific tests. Each item of glazing material is subjected to a selection group of these tests, as appropriate for the general use of the material. For example, 3-ply laminated windshield glazing, Item 1, is subject to 9 tests.

The only current items of glazing that may be used in the windshield of a motor vehicle are Item 1, Safety Glazing Material for Use Anywhere in a Motor Vehicle, Item 10, Bullet Resistant Glass for Use Anywhere in a Motor Vehicle, and Item 14, Glass-Plastic.

Item 14 (glass-plastic glazing) was added to FMVSS No. 205 by NHTSA in 1983 (See 48 FR 52061), without limitation as to the location of its use in

a motor vehicle. This item consists of glass on the outside surface and plastic on the inside surface. In adding Item 14, the agency anticipated that this type of glazing would consist of laminated glass to which a plastic layer was added on the inside surface. However, it is possible to manufacture the item with or without laminated glass. For example, it could consist of the current high penetration resistant (HPR) three-ply glazing to which one or more layers of plastic have been added to create a windshield of four or more plies, or it may simply consist of a single sheet of glass to which a layer of plastic has been added to the inside surface.

By letter dated July 24, 1986, General Motors Corporation (GM) wrote to the agency, noting that the addition of Item 14 to FMVSS No. 205 allows the use of two-ply glazing in windshields. GM stated that the advantages of the two-ply configuration over the conventional high penetration resistant three-ply (HPR) windshields include reduction of weight, lower cost, improved optical quality, more design flexibility, and less windshield breakage. GM questioned whether the current test procedure for penetration resistance is a relevant method for two-ply glazing. This test, known as Test 26, is intended to be used in determining whether laminated glass (used predominantly in windshields) has sufficient penetration resistance from a moderate-sized object. It consists of dropping a 5 pound steel ball into a 12 inch by 12 inch glass sample from a point 12 feet above the sample. The sample is centered on the top of a 17⅜ inch square wooden frame with a 11⅜ inch square opening. The test is deemed a failure if the ball passes "through" the sample. The five pound ball penetration resistance test accurately measures penetration resistance of Item 1 glazing and five-ply HPR Item 14 (glass-plastic) glazing. However, because two-ply glass-plastic glazing is much more flexible, during the test, the steel ball will break the glass and force the entire specimen through the frame without testing penetration resistance. Clamping will correct this test ambiguity.

Three-ply Item 1 glazing and five-ply glass-plastic glazing have different results for the five pound ball penetration resistance test, compared to the two-ply glass-plastic glazing, in the following respect. The traditional three-ply HPR windshield glazing is laminated glazing consisting of a sheet of plastic bonded between two sheets of glass. Five-ply glass-plastic glazing consists of the sheet of plastic bonded between two sheets of glass plus two layers of plastic on the inside of the vehicle facing the occupants. When the test ball for Test 26 drops onto a horizontal three-ply specimen, radial and circumferential cracks develop about the point of impact. The cracks have an appearance similar to a spider web. While both the upper and lower sheets crack, the cracks on the upper sheet of glass do not necessarily coincide with the cracks on the lower one. Due to the difference in the patterns of cracks, the cracks in one sheet are normally adjacent to unbroken glass in the other sheet, and vice versa. This unbroken glass provides a localized rigidity. The cumulative effect of this characteristic is that the three-ply glazing sample retains sufficient rigidity so that the sample does not fall through the test fixture during Test 26. The tensile strength of the layer of plastic provides the penetration resistance.

On the other hand, GM stated that the two-ply version of glass-plastic glazing, which is more flexible than three-ply or five-ply glazing, flexes when struck by the ball, which forces the glazing through the frame, without the ball penetrating the sample. GM asserted therefore that the test does not adequately test the ability of the two-ply sample to resist penetration of the ball. Since there is no specific prohibition of clamping the sample, GM requested an interpretation of FMVSS No. 205 to allow restraint of the test sample in the test fixture for Test 26.

By letter dated May 27, 1987, NHTSA responded that the agency could not adopt such a change in the test procedure by an interpretation letter. The agency stated that in order to address the problem and to ensure objectivity, it was necessary to issue a proposal to amend the standard to establish uniform requirements for providing additional support to two-ply glazing materials during Test 26. Therefore, the agency treated the GM letter as a petition for rulemaking.

NHTSA proposes modification of FMVSS No. 205 to require clamping of glass-plastic glazing, both laminated and non-laminated versions, for drop Test 26. No clamping is proposed for Test 26 for the non-glass-plastic version, Item 1. For reasons explained in Part VII of this preamble, public comment is also requested on the advisability of extending the clamping procedure to Test 9 and 12.

II. Need for the Change in Test Procedure

Every year, hundreds of thousands of American motorists suffer pain, disfigurement and unquantifiable psychological trauma from lacerative injuries caused by motor vehicle windshields. The HPR windshield, which has been standard in American motor vehicles since 1966, reduces the likelihood that occupants penetrate the windshield during a crash, and is very effective in preventing serious lacerative injuries. However, nearly 200,000 minor lacerations still occur annually due to occupant contact with the windshield. As noted above, the traditional HPR windshield consists of a sheet of plastic bonded between two sheets of glass. When a standard HPR windshield is struck, both the inner and outer glass layers tend to break, thus setting up edges of broken glass on the inner surface.

In 1983, NHTSA amended FMVSS No. 205 to permit the use of glass-plastic glazing. The agency hoped that use of glass-plastic glazing in windshields would reduce lacerative injuries by approximately two-thirds. The agency anticipated that laminated glass would be used in the production of glass-plastic glazing. The various manufacturers which took advantage of this amendment did, in fact, use four and five-ply anti-lacerative windshields. The most extensive user of the anti-lacerative glazing, GM, decided to discontinue use of the glazing after the 1987 model year. It reported that its decision was based on handling problems with the inner plastic surface, that apparently was too easily scratched, deliberately or inadvertently, resulting in warranty claims and consumer dissatisfaction.

If manufacturers such as GM had some additional incentive to offer the anti-lacerative windshield, that type of glazing might become more widely used and lacerations could be reduced. An incentive that would encourage its use would be the opportunity to reduce the cost and weight of windshield glazing. Use of a two-ply, instead of four or five-ply, version of glass plastic glazing could permit a reduction in materials of approximately 15 percent and a corresponding cost reduction.

There is an apparent impediment, however, to the use of two-ply glass-plastic glazing. Glass-plastic glazing must meet Test 26, but, as noted above, during Test 26, the two-ply glass-plastic glazing simply falls through the frame after impact from a five pound steel ball. It is unclear in those circumstances whether the sample of glazing has passed or failed the test. In a sense, the sample could be said to have passed the test since the ball does not actually penetrate or pass through the sample. However, since the sample falls through the frame, the penetration resistance ability of the glass-plastic, the reason for the test, is not really assessed.

NHTSA tentatively concludes that the current test procedure is not appropriate for the more flexible two-ply glass-plastic glazing. The shortcoming of the test procedure arises from the fact that Test 26 was designed for three-ply laminated glass (Item 1), which is heavier and more rigid than two-ply glass-plastic glazing. In this rulemaking, the agency is proposing to modify Test 26 so that it is appropriate for use in testing both types of glass-plastic glazing.

The proposed change in the test procedure would make clear whether a tested sample of two-ply glass-plastic glazing does in fact possess the requisite penetration resistance. Further, with this adjustment in the test procedure to allow two-ply glass-plastic glazing, manufacturers would be provided with an incentive to conduct further research into two-ply glazing, to produce lighter and more cost effective windshields, and in other ways improve the state of glazing technology.

III. GM Test Data on Injury Criteria During Crash Tests

NHTSA has evaluated the following available test data, provided by GM, to determine the potential effect on safety, if manufacturers were to use 2-ply glass-plastic glazing as opposed to the traditional three-ply high penetration resistant (HPR) glazing. The test data compared two-ply and three-ply laminated glazing in five measures of injury criteria during crash tests. These results showed lesser injury when the two-ply windshield was tested compared to the traditional three-ply HPR windshield. This held true both for windshields that were secured into position in the motor vehicle by clamping and for those bonded into position.

By letter dated October 24, 1986, GM submitted a summary of data on sled tests of unrestrained dummies at 30 miles per hour. Their tests compared five measures of injury criteria: head injury criteria (HIC), peak head deceleration, chest deceleration, neck moments and facial lacerations. In tests where the windshields were held in position by mechanical clamps to the frames, the injury criteria are reduced by the use of the two-ply windshield compared to the traditional three-ply HPR windshield. In more advanced design tests, where the windshields were bonded into position, HIC was decreased almost 25 percent, but the chest deceleration (G's) increased approximately 5 percent. In a demonstration film produced by Saint Gobain Vitrage (SGV), a comparison of clamped 12 inch by 12 inch specimens of the traditional three-ply HPR glazing and the two-ply Securiflex-2 glazing revealed significant advantages of the two-ply design. For a 28 mile per hour sled test, these benefits include a HIC reduction form 656 to 415, reduced neck moments, reduction of lacerations and no glass in the passenger compartment.

IV. Comparison of the Effects of Current and Proposed Test Procedures on Safety

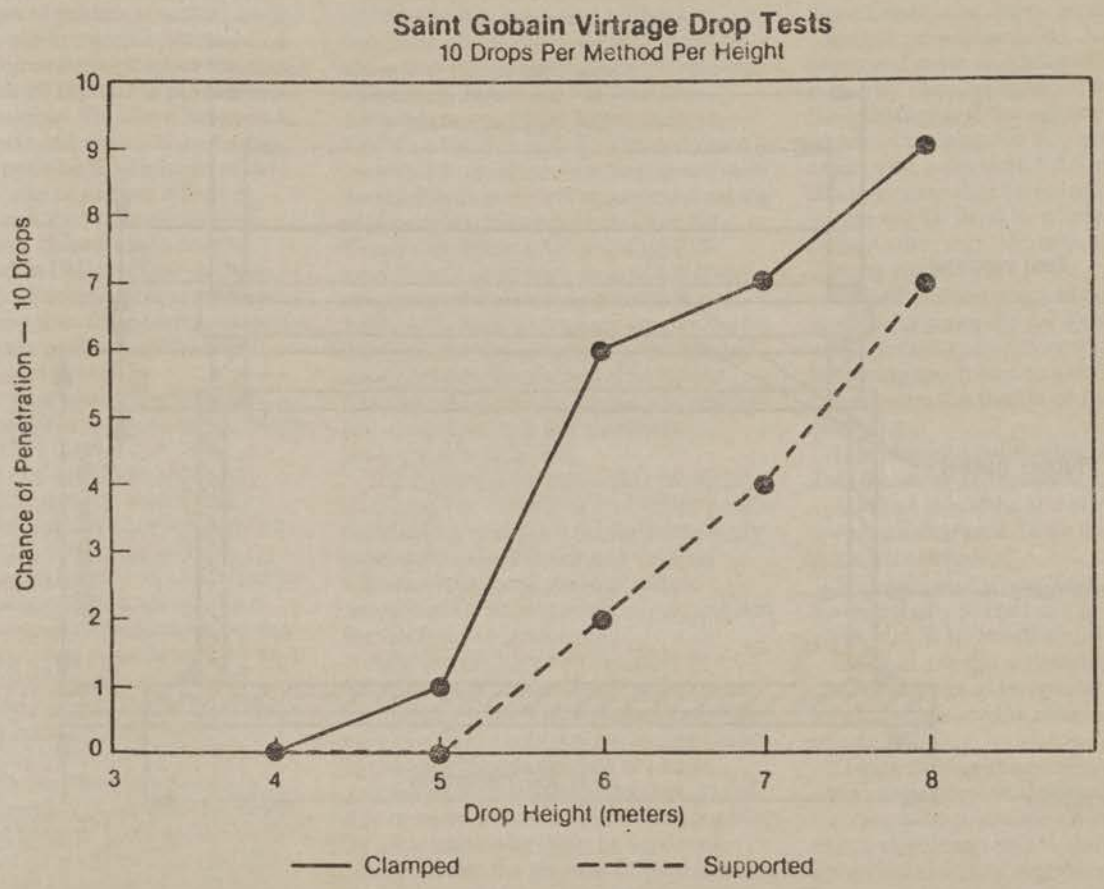
In the context of deciding whether clamping test samples in the five pound ball penetration resistance test would produce more objective results for two-ply glass-plastic glazing, the agency has examined the effects that clamping of test samples would have on compliance with Standard 205, and on occupant safety.

In order to quantify the difference in Test 26 results for clamped and unclamped test samples, the agency reviewed tests by two glazing manufacturers and an independent testing laboratory. Data submitted by a major glazing manufacturer, Libbey-Owens-Ford (LOF), as part of the GM information, indicated that for a given size and type windshield, clamping a standard three-ply windshield would cause the test samples to fail the 5 pound drop test at a lower height than when unclamped. In other words, the LOF data indicated that clamping created a more stringent test. Next, in the Saint Gobain Vitrage (SGV) film, more test failures were experienced with the clamped 12 inch by 12 inch test samples of laminated three ply HPR glazing than with the unclamped samples.

Finally, information was solicited by the agency from the German test facility, Staatliches Materialprufungsamt Nordheim-Westfalen (MPA). By letter dated March 16, 1987, Dr. K. Preusser provided three supporting documents related to the clamping issue. These included the German proposal for amendment of the Economic Commission of Europe (ECE) Regulation 43 international standard, a test protocol in which they studied the behavior of clamped samples, and a report of headform drop tests conducted on oversize samples. The German proposal recommended that the test samples be placed between two steel frames, with pressure applied, and movement of the test piece should not exceed 2 millimeters (mm). A 2260 grams (5 pounds) ball would be dropped onto the specimens from a height of four meters. The test report concludes that "Concerning the penetration of the ordinary laminated glass there is no decisive difference in the results of the 2260 gram (5 pounds) ball test between clamping the test piece or only laying it on the support." In the head form drop test report, the writer concludes that the use of unclamped samples (in this case, specifically, windshields) will produce erratic results, due to the non-uniform contact of the sample to the frame. Therefore, clamping would be a preferable procedure for these oversize samples.

NHTSA has evaluated the objectivity of the clamping procedure that it is proposing in this notice of proposed rulemaking. In this evaluation, NHTSA has reviewed the data from the 120 drop tests conducted by SGV in their video that involved the use of clamped specimens on a modified version of the current ANS Z26 fixture. There appeared to be no problem conducting the test. The SGV testing demonstrated the repeatability of the proposed test procedure. The testing showed clamping will result in a greater number of failures with increased drop height. This is because with increased height, the force with which the steel ball drops onto the glazing becomes greater. The testing also showed a consistent difference between the failure rate of clamped and unclamped samples. The results of this testing are presented in the following graph.

Saint Gobain Vitrage (SGV) Drop Tests



NHTSA tentatively concludes that requiring glass-plastic glazing to pass Test 26 while clamped is practicable based on the agency's consideration of the tests conducted by SGV and LOF and on the fact that both companies have already produced two-ply glazing and are waiting to begin mass production and market the product. Further, the agency believes that addition of clamping of glass-plastic glazing during Test 26 would not preclude use of the current five-ply design since five-ply glazing is basically Item 1 laminated glazing plus an inner layer of plastic and there have been no problems with Item 1 glazing passing the 5 pound ball drop test. Additionaly, the agency infers from the facts that ECE 43 currently requires clamping of glass-plastic specimens using the fixture in Figure 1 and that the Europeans have conducted extensive testing under that test procedure that the procedure is reliable for regulatory purposes.

V. Selection of a Revised Test Procedure

For the following reasons, it is proposed that NHTSA adopt a modified version of the clamping procedure in the current Economic Commisison of Europe (ECE) regulation on testing glass-plastic specimens. A discussion of procedures, utilized by the International Standards Organization (ISO), which are proposed to be incorporated into the clamping procedure also follows.

Currently, clamping is required in the most recent version of Economic Commission of Europe (ECE) Regulation 43 "Uniform Provisions Concerning the Approval of Safety Glazing and Glazing Materials." In ECE Regulation 43, the 2260 gram (g) (5 pound) ball penetration drop test procedure, as described in annex 3, states, "In the case of glass-plastics glazing the test piece shall be clamped to the support." The description of the device in the regulation is as follows:

Supporting fixture, such as shown in figure 1, composed of two steel frames, with machined borders 15 mm wide, fitting one over the other and faced with rubber gaskets about 3 mm thick and 15 mm wide and of hardness 50 IRHD. The lower frame rests on a steel box about 150 mm high. The test piece is held in place by the upper frame, the mass of which is about 3 KG. The supporting frame is welded onto a sheet of steel of about 3 KG. The supporting frame is welded onto a sheet of steel of about 12 mm thick resting of the floor with an interposed sheet of rubber about 3 mm thick and of hardness 50 IRHD.

Dimensions in millimeters

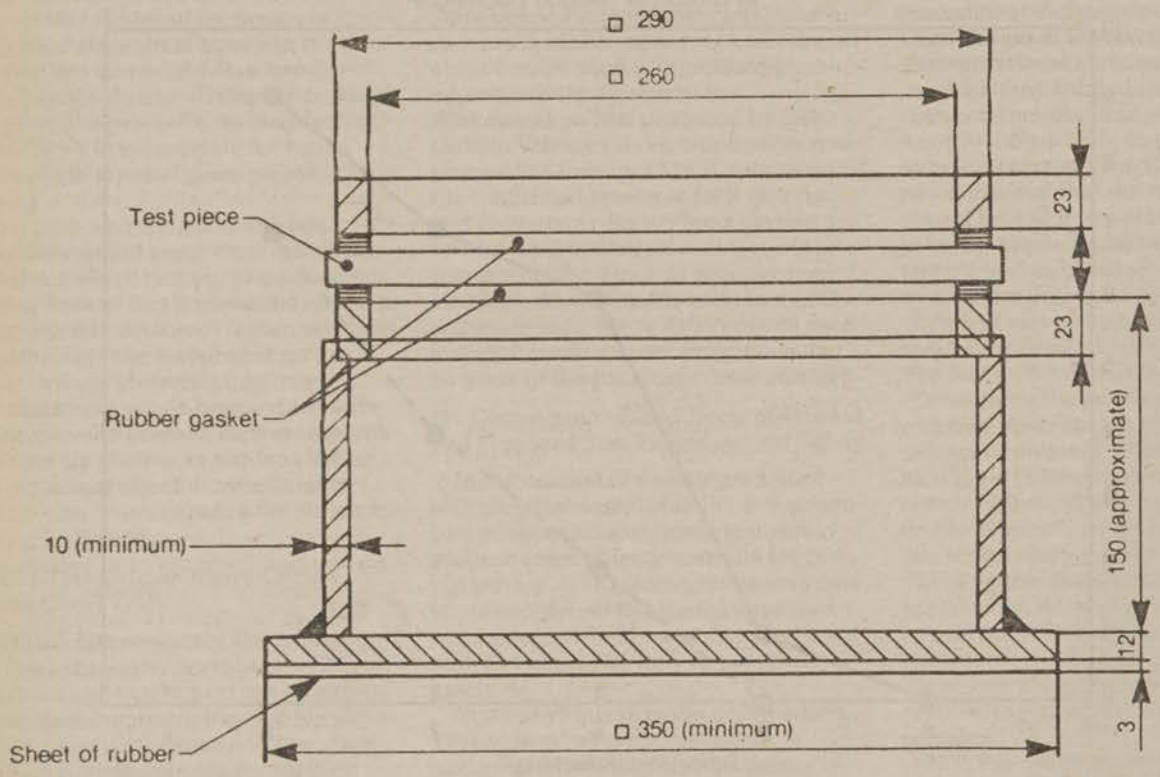


Figure 1 — Test Fixture For Clamped Specimens

A similar test setup is described in the International Standards Organization (ISO) proposed revision of Standard 3537–1975 (E) "Road Vehicles—Safety Glasses—Test Methods for Mechanical Properties". The ISO proposal includes an additional requirement that the test piece not move more than 2 millimeters (mm) at any point along the inside periphery of the fixture. Though not specifically explained, the 2 mm criterion was apparently selected as an additional requirement to minimize slippage during the test procedure.

The test data provided by SGV appeared to utilize a test setup similar to the one depicted in Figure 1 above, including the rubber gasket below the test sample. In selecting a test frame, NHTSA was concerned whether the rubber below the test sample, as specified in the ISO and the ECE test holding fixtures, would absorb energy to the extent that it would significantly alter the test. The current wooden holding fixture for drop tests specified in ANS Z26 has no rubber gasket. In an effort to determine the effects of the rubber under the test samples, NHTSA initiated a dialog with Dr. Siegfried H. Herliczek, of LOF, who had been involved in the technical support of GM's petition. Dr. Herliczek ran four test samples in the LOF clamping fixture to determine the difference in test results between the test with and without the rubber gasket. For the comparison , he ran standard three-ply glazing (.090-.030-.090 inch) and two-ply (.125 glass-.030 inch PVB-.004 inch polyester) test samples, once each with a rubber gasket on either side and once without a rubber gasket (specifically, with a hard Bakelite-type material as a hard gasket). The heights form which the 5 pound ball has to be dropped to get it to pass through the test specimens were similar for the samples with gaskets and without gaskets, within expected error. For the two-ply samples, they were not able to achieve failures; there was no penetration. It was reported that the glass on both the three-ply and two-ply samples mounted on the hard gasket broke as the pressure was applied, prior to the actual drop test. The LOF test fixture was designed with uniform pressure distribution using hydraulics. Therefore, the agency believes that glass failures would be even more prevalent with the more traditional mechanical clamping methods, due to load concentrations without the lower rubber gasket.

For these reasons, the agency concludes that clamping of glass-plastic samples of Item 14 glazing in Test 26, is a more realistic and practical test procedure for penetration resistance than the current procedure. Although the clamping will result in a more stringent test for penetration resistance of glass-plastic glazing, the resultant materials have the potential of having less perpendicular rigidity and therefore less injury causing potential than the now common HPR windshield.

It is also proposed that the rule should specify rubber gaskets above and below the test sample. The agency proposes the same type of rubber specified by the ECE, that is, rubber with a hardness of 50 IRHD (International Rubber Hardness Degrees). The 50 IRHAD is proven and is radily available. To allow for normal stock variance and material aging, the agency is proposing a tolerance of the rubber hardness of plus or minus 5 degrees. This is the same amount of tolerance used elsewhere in this standard and in FMVSS 116, "Motor Vehicle Brake Fluids". The agency is also proposing that the gaskets have the same thickness as those in the ECE procedure, i.e., 1/8 inch.

The agency considered whether to attempt to modify the existing test frame used under FMVSS No. 205 or to propose use of the ECE 43 clamping procedure. The agency tentatively concluded for several reasons that the current FMVSS 205 wooden frame would require extensive modification to become a functional clamping frame. First, the recessed ridge for holding the glass during testing is so deep, that even with the 1/8 inch gasket above and below the test sample, the 1/8 to 1/4 inch thick specimens may not be elevated enough to contact the flat upper surface that would be used to apply the clamping pressure. The lower frame would have to be modified to add a hard gasket as a spacer. Second, the wooden frame has no provisions for clamping. The frame would have to be modified in additional ways, such as drilling holes or adding clamps. Based on these considerations, the agency tentatively concluded the best alternative is to adopt the ECE test frame for clamping glass-plastic glazing for Test 26. A preliminary sketch of the fixture is provided in Figure 1.

VI. Comments on Clamping for Tests 9 and 12

Proposing to specify clamping for Test 26 raises the related question of whether clamping should be specified for other drop tests for Item 14 glazing. The agency is tentatively inclinded not to do so. In addition to Test 26, FMVSS No. 205 uses impact Tests 9 and 12, as identified in ANS Z26, to test Item 14 glass-plastic glazing. NHTSA notes that the objects dropped in those tests are considerably lighter than the 5 pound object used in Test 26 and therefore are less likely to create the problem experienced in conducting test 26. Test 9 is a 7-ounce dart/drop test from 30 feet to determine the behavior of safety glass under impact from small hard objects. Test 12 is an 8 ounce (0.5 pound) steel ball drop test from 30 feet to determine whether the safety glass has a minimum strength and is properly made.

Further, NHTSA notes that ECE R43 appears to be consistent with its judgment about the need for clamping since that regulation requires clamping only for its equivalent of Test 26. Addendum 42 of ECE Regulation 43, Revision 1, (24 February, 1988), Annex 3, section 2.2, indicates the 2260 gram (4.98 pounds) ball drop test requires clamping of glass-plastic samples. Section 2.1, which describes a 227 gram (g) (0.5 pound) ball drop test, does *not* require clamping of the sample. Additionally, there is no ECE equivalent test to Test 9, the dart test. Consequently, Test 26 is the only FMVSS 205 test that would have to add clamping of the test sample to harmonize with the clamping procedure in ECE R43.

The agency notes also that requiring clamping for Tests 9 and 12 might pose a problem by making it easier for two-ply glazing to pass Tests 9 and 12, thus allowing tempered glass-plastic windshields. This would pose a problem for the following reasons.

As a beginning point, as used in Standard 205, "laminated" glass is an ambiguous term. The term refers to the way the final glazing is assembled, not to the way the glass itself is finally processed. Laminated glass consists of one or more sheets of glass held together by an intervening layer or layers of plastic. After the glass is formed into sheets, it is finally processed in one of two ways. It is either reheated and cooled slowly, creating "annealed glass" or is toughened thermally or chemically creating "tempered glass."

The two-ply annealed glazing will apparently pass Tests 9 and 12 unclamped. The agency has come to this tentative conclusion because the petitioner, GM, has not indicated a need for clamping the specimen in Tests 9 and 12.

By clamping specimens in Tests 9 and 12, tempered glass-plastic also may pass all the AS 14 tests and thereby be certified for use in areas requisite for driving visibility. Currently, tempered glass-plastic windshields are in effect precluded by the existing tests in ANS Z26 that windshield glass must pass. The agency is concerned about the possibility enabling tempered glass plastic to pass those tests because of risk of reduced visibility through broken tempered glass-plastic. Tempered glass is normally single ply, toughened either thermally or chemically. Highly tempered glass, when broken, shatters into small cubes, an effect called dicing. This characteristic is preferable in single ply glazing to prevent lacerations. But when this dicing occurs on a laminate, the cracks of the dicing lines around the cubes will obscure vision, especially in glare conditions. Stone strikes are common on windshields. A shattered tempered glass windshield would instantly obscure forward vision. For these reasons, if the agency were to require clamping for Tests 9 and 12, it might also amend S5.1.2.5 of Standard 205 to ensure that tempered glass-plastic would not be used in windshields, and/or any other location requisite for driving visibility.

Although the agency is not inclined to specifying clamping for Tests 9 and 12, it nevertheless requests responses to the following questions to aid the agency in considering the merits of requiring such clamping:

1. Is clamping of the test specimens in Tsts 9 and/or 12 necessary?
2. What would be the effects on the specimen design if Tests 9 and/or 12 required clamping?
3. Would modifying Test 26 inadvertently permit use of tempered glass-plastic in windshields?
4. What are the advantages or disadvantages of tempered glass-plastic in windshiels, or the side and rear windows?

Depending on the public comments, the agency may, in the final rule, require the clamping procedure for Test 9 (the 7-ounce dart/drop test to determine the behavior of safety glass under impact from small hard objects) and Test 12 (the 8 ounce steel ball drop test to determine whether the safety glass has a minimum strength and is properly made). Wording for the clamping procedure for Tests 9 and 12 would be similar to the description for the procedure in Test 26, the 5 pound ball penetration resistance test. If the clamping procedure for Tests 9 and 12 is adopted, language prohibiting use of tempered Item 14 glass-plastic in windshields may also be included in the final rule.

VIII. Implementation Date

Because this rulemaking is to correct a problem in the existing test procedure for AS 14 glass-plastic glazing, it is proposed that the rule become effective upon issuance. The agency believes that due to the relatively simple and inexpensive nature of the additional clamping procedure for the 5 pound ball drop test, immediate effectiveness of this new procedure would not present a problem to testers. The agency is unaware of circumstances that would necessitate a phase in period for impiementation of the new testing procedure. Public comment is invited on

this aspect of the rulemaking. If the commenter wishes to recommend a phase in period for the new procedure, a recommend time period is requested.

IX. Regulatory Impacts

1. Cost and other impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency estimates that the new Test 26 clamping procedure for two-ply glass-plastic glasing, if adopted, would require an expenditure of less than $200 in test equipment for fabricating a new test fixture, for each of the approximately ten testing companies or laboratories throughout the United States. The clamping procedure would add less than five minutes to the length of time needed to conduct each test. Public comment is invited on the likely costs and benefits that would be associated with the proposed changes in Test 26.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant ecoomic impact on a substantial number of small entities. This proposed rule would have no significant effect even if all of the approximately 10 testing entities for glazing in the United States were small businesses or other small entities (defined in 13 CFR 121.2 under SIC 8734 "Testing Laboratories" as those entities grossing less than $3.5 million a year). The rationale for this certification is that this proposed rule, if adopted, would require the purchase of less than $200 in new test equipment for each of the affected testing companies or laboratories that test motor vehicle glazing.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

IX. Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), be amended as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follow:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. The introductory text to existing paragraph § S5.1.2.4 would be revised to read as follows:

S5.1.2.4 *Item 14—Glass-Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.5 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in (a), (b), (c), (d), and (e) of this paragraph, may be used anywhere in a motor vehicle, except that it may not be used in convertibles, in vehicles that have no roof or in vehicles whose roofs are completely removable.

3(a). Alternative 1. Paragraph (e) would be added after paragraph (d) of S5.1.2.4 as follows:

(e) The glass-plastic glazing specimen tested in accordance with test No. 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown. The clamping gaskets shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber hardness Degrees) plus or minus five degrees. Movement of the test piece, measured after the test shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test piece, beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

3(b). Alternative 2. Paragraph (e) would be added after paragraph (d) of S5.1.2.4 as follows:

(e) The glass-plastic glazing specimen tested in accordance with test Nos. 9, 12 or 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown. The clamping gasket shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber Hardness

Degrees) plus or minus five degrees. Movement of the test piece, measured after the test shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test piece beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

4. Section 5.1.2. would be amended by adding Section S5.1.2.6 after Section 5.1.2.5 as follows:

S5.1.2.6 *Tempered Glass-Plastic Prohibition.* Glass that is strengthened by any method may not be used in glass-plastic glazing in any windshield or other location requisite for driving visibility.

Issued on: October 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23866 Filed 10-5-89; 9:28 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331

[Ex Parte No. 55 (Sub-No. 73)]

Practice and Procedure; Miscellaneous Amendments; Revisions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing to revise the above-numbered Parts of Title 49, Code of Federal Regulations as part of an effort to streamline and update its regulations. By this means, we intend to make our rules more understandable and easier to use.

DATE: Comments are due November 13, 1989.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to Ex Parte No. 55 (Sub-No. 73) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 275-7615, or Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The vast majority of these revisions involve editing to remove obsolete, unnecessary, or redundant material from Parts that are being retained. These changes are too numerous to detail here. All interested parties are encouraged to study the appendix, which contains all the proposed changes, and compare them to the current rules. We will highlight some of the more significant changes.

Part 1136 requires that rail and motor carriers give advance notice and justification for commutation or suburban passenger fare increases. Notice to the public of such increases is already required by 49 CFR 1312.5(c) The Commission may not investigate, suspend, revise, or revoke a rate proposed by a motor passenger common carrier, acting independently, on the ground that such rate is unreasonable. 49 U.S.C. 10708(e). However, the Commission, on complaint, may review rates established by independent action. *Procedures—Complaints Against Bus Car. Rate & Fares,* 133 M.C.C. 240 (1983); 49 CFR part 1142. An independently established motor passenger carrier rate may become effective after only 1 day's notice. 49 CFR 1312.39(i) Independently established passenger carrier rates (motor and rail) have been challenged on only three occasions during the last 5 years (none on the motor side). Similarly, there have been no complaints or protests stemming from collective ratemaking activity by passenger carriers. For these reasons, we proposed to retain part 1136 only as it pertains to rail passenger carriers.

We propose to revise 49 CFR 1331.5 in substantial part. Part 1331 governs applications by rate bureaus seeking immunity from the antitrust laws to negotiate collective rates. The Motor Carrier Act of 1980 changed approval standards considerably by narrowing the range of actions that could be immunized. Section 5 of part 1331 was added to provide guidance for rate bureaus seeking approval of amended agreements filed under the mandate of the Act. Not until 1986, however, did the Commission give priority to reviewing existing agreements for compliance. Now, we have given final approval to about two thirds of the agreements, and have provisionally approved most others. Viewed in this context, 49 CFR 1331.5, as it currently reads, has served its purpose. To make part 1331 more meaningful, we propose: (1) Revising the title of section 5 to clarify that it governs all rate bureaus, not just motor passenger carrier bureaus; and (2) prescribing rules on retaining antitrust immunity to replace the rules on seeking approval of agreements since we have approved most agreements.

Finally, we propose to remove parts 1080, 1083, and 1085 in their entirety. Part 1080 covers the contents and filing of contracts between household goods freight forwarders and motor carriers. Part 1083 concerns the filing of contracts between household goods freight forwarders for joint loading and terminal services and facilities. Removal of these Parts is consistent with the relaxation of contract filing requirements and our experience that filing these contracts is not necessary to enfore the statute. Part 1085 requires that a household goods freight forwarder (HHGFF) give shippers certain information, including Commission office locations where complaints may be filed. The Part does not apply where the HHGFF has actual notice that the shipper has already received the information. Much of the traffic moves in foreign commerce and involves personnel relocations by the Department of Defense or by internationl corporations in the private sector. The Commission has received few complaints under this part. The opportunity for abuse is minimal, has not arisen, and does not warrant retention of Part 1085.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pickup in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Environmental and Energy Considerations

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human environment or conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission certifies that the proposed rules will not have a significant effect on a substantial number of small entities. Either they contain no substantive change from the existing regulations or they delete and remove obsolete or unnecessary material, and thus reduce the regulatory burden. The revised Parts should provide information that is both more accessible and understandable, and to that extent our action should benefit small entities.

Index

List of Subjects

49 CFR Part 1022

Intergovenmental relations.

49 CFR Part 1043

Insurance, Motor carriers, and Surety bonds.

49 CFR Part 1044

Brokers and Motor carriers.

49 CFR Part 1047

Agricultural commodities, Buses, Cooperatives, Livestock, Motor carriers, Reporting and recordkeeping requirements, and Seafood.

49 CFR Part 1051

Freight forwarders, Motor carriers, and Reporting and recordkeeping requirements.

49 CFR Part 1058 and 1167

Motor carriers.

49 CFR Part 1061

Motor carriers and Smoking.

49 CFR Part 1063

Aged, Blind, Handicapped, and Motor carriers.

49 CFR Part 1067 and 1161

Administrative practice and procedure and Motor carriers.

49 CFR Part 1070

Maritime carriers.

49 CFR Part 1080

Freight forwarders, Motor carriers, and Moving of household goods.

49 CFR Part 1081 and 1083

Freight forwarders.

49 CFR Part 1084

Freight forwarders, Insurance, and Surety bonds.

49 CFR Part 1085

Freight forwarders and Moving of household goods.

49 CFR Part 1091

Alaska, Intermodal transportation, Maritime carriers, and Motor carriers.

49 CFR Part 1104

Administrative practice and procedure.

49 CFR Part 1136

Administrative practice and procedure, Motor carriers, and Railroads.

49 CFR Part 1143

Administrative practice and procedure, Buses, and Intergovernmental relations.

49 CFR Part 1169

Administrative practice and procedure and Buses.

49 CFR Part 1170

Administrative practice and procedure, Buses, and Employment.

49 CFR Part 1331

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, and Railroads.

Decided: September 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary

For the reasons stated in the preamble, title 49, chapter X, parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331 of the Code of Federal Regulations are proposed to be amended as follows:

1. Part 1022 is proposed to be revised to read as follows:

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

Sec.

Authority: 49 U.S.C. 10101, 10321, and 11502.

§ 1022.1 Eligibility.

Any State may agree with the Interstate Commerce Commission to enforce the economic laws and regulations of that State and the United States concerning highway transportation.

§ 1022.2 Extent of agreement.

The written agreement, signed by a competent State authority and filed with the Commission's Office of the Secretary, shall specify the extent of the State's participation, as described below. The Commission will reciprocate to that extent.

§ 1022.3 Cancellation.

Either party may cancel or withdraw from all or part of a cooperative agreement by written notice indicating the effective date of such action.

§ 1022.4 Exchange of information.

Information acquired by a State agent, in his official duties, regarding violation of the economic laws of the United States concerning highway transportation or of the Commission's regulations, shall be communicated to the Regional Director of the Commission's Office of Compliance and Consumer Assistance.

§ 1022.5 Requests for assistance.

Either party to a cooperative agreement may request, in writing the other's assistance in obtaining evidence to enforce the economic laws and regulations governing highway transportation. Such evidence, obtained as time, personnel, and funds permit, shall be transmitted to the State authority or Regional Director, as the case may be, together with the name and address of any agent or personnel available to testify in an enforcement action.

§ 1022.6 Joint investigation or inspection.

The Regional Director and appropriate State authority may agree to conduct a joint inspection or investigation of the property, equipment, or records of motor carriers or others, to enforce the pertinent economic laws and regulations. They shall decide the location, time, and objectives of the joint effort, and shall select the persons who will supervise it and make the necessary decisions. Any agent or personnel of either agency having knowledge of the facts shall be made available to testify in an enforcement action.

§ 1022.7 Joint administrative activities.

To facilitate the interchange of information and evidence, and the conduct of the joint effort and any ensuing administrative action, the Regional Director and appropriate State authority shall, when warranted, schedule joint conferences. They shall inform each other of their enforcement capabilities and of any changes in their regulations.

§ 1022.8 Supplemental agreements.

The Commission and State may agree to supplement their agreement to further implement 49 U.S.C. 11502.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

2. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, and 10927; 5 U.S.C. 553.

3. Paragraph (a) of § 1043.10 is proposed to be revised to read as follows:

§ 1043.10 Fiduciaries.

(a) *Definitions.* The terms "insured" and "principal" as used in a certificate

of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term "fiduciary" means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

* * * * *

4. Part 1044 is proposed to be revised to read as follows:

PART 1044—DESIGNATION OF PROCESS AGENT

Sec.
1044.1 Applicability.
1044.2 Form of designation.
1044.3 Eligible persons.
1044.4 Required States.
1044.5 Blanket designations.
1044.6 Cancellation or change.

Authority: 49 U.S.C. 10329, 10330, and 11705.

§ 1044.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 1043.10(a)).

§1044.2 Form of designation.

Designations shall be made on Form BOC-3, *Designation of Agent for Service of Process.* Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§ 1044.3 Eligible persons.

All persons (as defined at 49 U.S.C. 10102(18)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

§ 1044.4 Required states.

(a) *Motor Carriers.* Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers.* Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

§1044.5 Blanket designations.

Where an association or corporation has filed with the Commission a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Interstate Commerce Commission by

_____

_____

(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including states traversed during such operations, except those States for which individual designations are named.

§ 1044.6 Cancellation or change.

A designation may be cancelled or changed only by a new designation except that, where a carrier or broker ceases to be subject to § 1044.4 in whole or in part for 1 year, designation is no longer required and may be cancelled without making another designation.

PART 1047—EXEMPTIONS

5. The authority citation for part 1047 continues to read as follows:

Authority: 49 U.S.C. 10525, 10526, and 10931.

6. The title of the last center heading of part 1047, where it appears both in the table of contents and immediately before § 1047.45, is proposed to be revised to read as follows:

PARTIAL EXEMPTION FOR MOTOR TRANSPORTATION OF PASSENGERS INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

* * * * *

7. Part 1051 is proposed to be revised to read as follows:

PART 1051—RECEIPTS AND BILLS

Sec.
1051.1 Bills of lading.
1051.2 Expense bills.
1051.3 Low value packages.

Authority: 49 U.S.C. 10321 and 11144; 5 U.S.C. 553.

§ 1051.1 Bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names or consignor and consignee.
(b) Origin and destination points.
(c) Number of packages.
(d) Description of freight.
(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a copy of the receipt or bill of lading as prescribed in 49 CFR part 1220.

§ 1051.2 Expense bills.

(a) *Property.* Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).
(2) Date of shipment.
(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).
(4) Number of packages.
(5) Description of freight.
(6) Weight, volume, or measurement of freight (if applicable to the rating of freight).
(7) Exact rate(s) assessed.
(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.
(9) Route of movement and name of each carrier participating in the transportation.
(10) Transfer point(s) through which shipment moved.
(11) Address where remittance must be made or address of bill issuer's principal place of business.

The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 1220. If the bill is electronically transmitted (when agreed to by the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) *Charter service.* Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.
(2) Name of carrier.
(3) Names of payor and organization, if any, for which transportation is performed.
(4) Date(s) transportation was performed.
(5) Origin, destination, and general routing of trip.
(6) Identification and seating capacity of each vehicle used.
(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, separately noted.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Itemized charges for transportation, including special services and fees.

(11) Total charges assessed and collected.

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

§ 1051.3 Low value packages.

The carrier and shipper may elect to waive the above provisions and use a more streamlined recordkeeping or documentation system for distribution of "low value" packages. This includes the option of shipping such packages under the released rates provisions at 49 U.S.C. 10730. The shipper is responsible ultimately for determining which packages should be designated as low value. A useful guideline for this determination is an invoice value less than or equal to the costs of preparing a loss or damage claim.

8. Part 1058 is proposed to be revised to read as follows:

PART 1058—IDENTIFICATION OF VEHICLES

Sec.
1058.1 Applicability.
1058.2 Method of identification.
1058.3 Size, shape, and color.
1058.4 Driveaway service.

Authority: 49 U.S.C. 10922, 10530, and 11106; 5 U.S.C. 553.

§ 1058.1 Applicability.

These rules govern all for-hire motor carriers except those providing: (a) Joint, through, regular-route passenger service under continuing lease or interchange arrangements, if the vehicle owner's name and "MC" number are displayed as prescribed at § 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers.

§ 1058.2 Method of identification.

Each vehicle operated under its own power shall display on both sides the name (or trade name) and "MC" number(s) of the carrier under whose authority the vehicle is being operated. The "MC" number(s) shall be in the following form: "I.C.C. MC-_____" but shall not include any sub numbers. The name of any other person operating the vehicle shall appear on the vehicle following the words "operated by" in addition to the other information required by this section. Additional identification may be displayed if consistent with these rules.

§ 1058.3 Size, shape, and color.

The name(s) and number(s) prescribed above shall be displayed, by removable device if desired, in letters and figures in sharp color contrast to their background, and they shall be of a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehile is stationary.

§ 1058.4 Driveaway service.

In driveaway service, a removable device may be affixed on both sides or at the rear of the single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit.

9. Part 1061 is proposed to be revised to read as follows:

PART 1061—LIMITATION OF SMOKING ON INTERSTATE BUSES

Authority: 49 U.S.C. 10521, 11101, and 11701.

§ 1061.1 Separate seating for smokers and nonsmokers.

(a) If otherwise permitted by law, motor common carriers of passengers may permit smoking of cigars, cigarettes, or pipes only in a smoking section, consisting of seats in the rear of the vehicle up to 30 percent of its capacity. This section does not apply to passenger carriers conducting charter operations.

(b) In unusual circumstances, the driver of the vehicle (or other carrier personnel) may make reasonable, minor modifications to assure passengers' comfort and safe, adequate, and expeditious transportation service.

10. Part 1063 is proposed to be revised to read as follows:

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

Sec.
1063.1 Applicability.
1063.2 Definitions.
1063.3 Ticketing and information
1063.4 Baggage service.
1063.5 Terminal facilities.
1063.6 Service responsibility
1063.7 Equipment.
1063.8 Accommodations for handicapped disabled, blind, and elderly
1063.9 Identification—bus and driver
1063.10 Relief from provisions.

Authority: 49 U.S.C. 10102, 10321, 10701, 10702–10705, 10708, 10721, 10722, 10724, 10730 10741, 10761, 10762, 10764 10922, 11101 11141–11145, 11701, 11702 11707 11708, 11901, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1063.1 Applicability.

These rules govern only motor passenger common carriers conducting regular-route operations.

§ 1063.2 Definitions.

(a) "Carrier" means a motor passenger common carrier.

(b) "Bus" means a passenger-carrying vehicle, regardless of design or seating capacity, used in a carrier's authorized operations

(c) "Facility" means any structure provided by or for a carrier at or near which buses pick up or discharge passengers.

(d) "Terminal" means a facility operated or used by a carrier chiefly to furnish passengers transportation services and accommodations.

(e) "Station" means a facility, other than a terminal, operated by or for a carrier to accommodate passengers

(f) "Service" means passenger transportation by bus between authorized points or over authorized routes.

(g) "Commuter service," notwithstanding 49 CFR 1312.1(b)(33), means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations

(h) "Baggage" means property a passenger takes with him for his personal use or convenience.

(i) "Restroom" means a room in a bus or terminal equipped with a toilet, washbowl, soap or a reasonable alternative, mirror, wastebasket, and toilet paper.

§ 1063.3 Ticketing and information.

(a) *Information service.* (1) During business hours at each terminal or station, information shall be provided as to schedules, tickets, fares, baggage, and other carrier services.

(2) Carrier agents and personnel who sell or offer to sell tickets, or who provide information concerning tickets and carrier services, shall be competent and adequately informed.

(b) *Telephonic information service.* Every facility where tickets are sold shall provide telephonic information to the traveling public, including current bus schedules and fare information, when open for ticket sales.

(c) *Schedules.* Printed, regular-route schedules shall be provided to the traveling public at all facilities where tickets for such services are sold. Each schedule shall show the points along the carrier's route(s) where facilities are located or where bus trips originate or terminate, and each schedule shall indicate the arrival or departure time for each such point.

(d) *Ticket refunds.* Each carrier shall refund unused tickets upon request, consistent with its governing tariff, at each place where tickets are sold, within 30 days after the request.

(e) *Announcements.* No scheduled bus (except in commuter service) shall depart from a terminal or station until a public announcement of the departure and boarding point has been given. The announcement shall be given at least 5 minutes before the initial departure and before departures from points where the bus is scheduled to stop for more than 5 minutes.

§ 1063.4 Baggage service.

(a) *Checking procedures.* (1) Carriers shall issue receipts, which may be in the form of preprinted tickets, for all checked baggage.

(2)(i) If baggage checking service is not provided at the side of the bus, all baggage checked at a baggage checking counter at least 30 minutes but not more than 1 hour before departure shall be transported on the same schedule as the ticketed passenger.

(ii) If baggage checking service is provided at the side of the bus, passengers checking baggage at the baggage checking counter less than 30 minutes before the scheduled departure shall be notified that their baggage may not travel on the same schedule. Such baggage must then be placed on the next available bus to its destination. All baggage checked at the side of the bus during boarding, or at alternative locations provided for such purpose, shall be transported on the same schedule as the ticketed passenger.

(b) *Baggage security.* All checked baggage shal be placed in a secure or attended area prohibited to the public. Baggage being readied for loading shall not be left unattended.

(c) *Baggage liability.* (1) No carrier may totally exempt its liability for articles offered as checked baggage, unless those articles have been exempted by the Commission. (Other liability is subject to 49 CFR Part 1064.) A notice listing exempted articles shall be prominently posted at every location where baggage is accepted for checking.

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, may disclaim liability for loss or damage to the following articles:

(i) Articles whose transportation as checked baggage is prohibited by law or regulation;

(iii) Fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials that have a disagreeable odor;

(iii) Money; and

(iv) Those other articles that the Commission exempts upon petition by the carrier.

(3) Carriers need not offer excess value coverage on articles of extraordinary value (including, but not limited to, negotiable instruments, papers, manuscripts, irreplaceable publications, documents, jewelry, and watches).

(d) *Express shipments.* Passengers and their baggage always take precedence over express shipments.

(e) *Baggage at destination.* All checked baggage shall be made available to the passenger within a reasonable time, not to exceed 30 minutes, afer arrival at the passenger's destination. If not, the carrier shall deliver the baggage to the passenger's local address at the carrier's expense.

(f) *Lost or delayed baggage.* (1) Checked baggage that cannot be located within 1 hour after the arrival of the bus upon which it was supposed to be transported shall be designated as lost. The carrier shall notify the passenger at that time and furnish him with an appropriate tracing form.

(2) Every carrier shall make available at each ticket window and baggage counter a single form suitable both for tracing and for filing claims for lost or misplaced baggage. The form shall be prepared in duplicate and signed by the passenger and carrier representative. The carrier or its agent shall receive the signed original, with any necessary documentation and additional information, and the claim check, for which a receipt shall be given. The passenger shall retain the duplicate copy.

(3) The carrier shall make immediate and diligent efforts to recover lost baggage.

(4) A passenger may fill out a tracing form for lost unchecked baggage. The carrier shall forward recovered unchecked baggage to the terminal or station nearest the address shown on the tracing form and shall notify the passenger that the baggage will be held on a will-call basis.

(g) *Settlement of claims.* Notwithstanding 49 CFR 1005.5, if lost checked baggage cannot be located within 15 day, the carrier shall immediately process the matter as a claim. The date on which the carrier or its agent received the tracing form shall be considered the first day of a 60-day period in which a claim must be resolved by a firm offer of settlement or by a written explanation of denial of the claim.

§ 1063.5 Terminal facilities.

(a) *Passenger security.* All terminals and stations must provide adequate security for passengers and their attendants and be regularly patrolled.

(b) *Outside facilities.* At terminals and stations that are closed when buses are scheduled to arrive or depart, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, information on local accommodations, and telephone numbers for local taxi service and police.

(c) *Maintenance.* Terminals shall be clean.

§ 1063.6 Service responsibility.

(a) *Schedules.* Carriers shall establish schedules that can be reasonably met, including connections at junction points, to serve adequately all authorized points.

(b) *Continuity of service.* No carrier shall change an existing regular-route schedule without first filing a written notice with the Commission's appropriate Regional Office(s). The carrier shall display conspicuously a copy of such notice in each facility and on each bus affected. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective date thereof, the reasons for the change, the availability of alternate service, and the name and address of the carrier representative passengers may contact.

(c) *Trip interruptions.* A carrier shall mitigate, to the extent possible, any passenger inconvenience it causes by disrupting travel plans.

(d) *Seating and reservations.* A carrier shall provide sufficient buses to meet

passengers' normal travel demands, including ordinary weekend and usual seasonal or holiday demand. Passengers (except commuters) shall be guaranteed, to the extent possible, passage and seating.

(e) *Inspection of rest stops.* Each carrier shall inspect periodically all rest stops it uses to ensure that they are clean.

§ 1063.7 Equipment.

(a) *Temperature control.* A carrier shall maintain a reasonable temperature on each bus (except in commuter service).

(b) *Restrooms.* Each bus (except in commuter service) seating more than 14 passengers (not including the driver) shall have a clean, regularly maintained restrooms, free of offensive odor. A bus may be operated without a restroom if if makes reasonable rest stops.

(c) *Bus servicing.* Each bus shall be kept clean, with all required items in good working order.

§ 1063.8 Accommodations for handicapped, disabled, blind, and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board a bus without assistance. A guide dog shall be provided free passage when accompanied by a blind person.

(b) *Assistance.* All carriers, whenever possible and on request, shall assist handicapped, disabled, blind, and elderly passengers in boarding buses (including advance boarding and seating) and using terminal accomodations and baggage service. A notice indicating where and from whom such assistance may be obtained shall be displayed prominently at all terminals.

(c) *Terminal accommodations.* (1) All terminals shall be constructed so that accommodations are accessible to handicapped, disabled, blind, and elderly passengers.

(2) All terminal construction or substantial renovation shall conform to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1–1961 (R1971) approved by the American National Standards Institute, Inc.

§ 1063.9 Identification—bus and driver.

Each bus and driver providing service shall be identified in a manner visible to passengers. The driver may be identified by name or company number.

§ 1063.10 Relief from provisions.

(a) *Petitions.* Where compliance with any rule would impose an undue burden on a carrier, it may petition the Commission either to treat it as though it were conducting a commuter service or to waive the rule. The request for relief must be justified by appropriate verified statements.

(b) *Notice to the public.* The carrier shall display conspicuously, for at least 30 days, in each facility and on each bus affected, a notice of the filing of any petition. The notice shall contain the carrier's name and address, a concise description of and reasons for the relief sought, and a statement that any interested person may file written comments with the Commission (with one copy mailed to the carrier) on or before a specific date that is at least 30 days later than the date the notice is posted.

11. Part 1067 is proposed to be revised to read as follows:

PART 1067—FITNESS PROCEDURES

Sec.
1067.1 Definition.
1067.2 Intervention by the Department of Transportation.
1067.3 Effect of adverse fitness finding on subsequent application.

Authority: 49 U.S.C. 3102, 10922, 10923, and 10927; 5 U.S.C. 552, 553, and 559.

§ 1067.1 Definition.

Fitness means an applicant's willingness or ability to conform to the Interstate Commerce Act and the regulations of the Interstate Commerce Commission and the Department of Transportation (DOT). (*See* 49 CFR 1160.5(a)(3).)

§ 1067.2 Intervention by the Department of Transportation.

(a) DOT may participate in application proceedings on the issue of fitness [by Memorandum of Agreement between the Commission and DOT, dated April 3, 1967, provision 2] by notifying the applicant and by filing a petition for leave to intervene setting forth generally the nature of the evidence it will present, within 30 days (protest period) of publication of a notice of such application in the *ICC Register.* Applicant may reply within 15 days of such filing. If DOT has not petitioned to intervene, its subsequent participation may be authorized at the Commission's discretion.

(b) This rule does not alter DOT's right to file a formal complaint with the Commission or to petition the Commission to institute on its own motion a formal investigation proceeding regarding a regulated carrier's practices.

§ 1067.3 Effect of adverse fitness finding on subsequent application.

An administratively final adverse fitness determination is not necessarily fatal to a subsequent application, which shall be considered on the same basis as that of any applicant not found unfit. Prior adverse findings may be officially noticed and may be found to bear on applicant's fitness.

PART 1070—HARBORS

12. Part 1070 is proposed to be amended as follows:

a. The authority citation for Part 1070 is revised to read as follows:

Authority: 49 U.S.C. 10541, 10543, 10544, and 10929.

b. Section 1070.1 is proposed to be amended by revising the introductory text and the introductory text of paragraphs (a) and (b) to read as follows:

§ 1070.1 Harbor limits.

The following harbors, within which transportation in interstate commerce by water is not part of a continuous through movement under common control, management, or arrangement to or from a place outside the limits, are exempt from regulation under 49 U.S.C. 10544(a):

(a) *New York, NY.* The waters within the area over which the Port of New York Authority has jurisdiction as shown by the heavy black line in the following map:

* * * * *

(b) *Philadelphia, PA.* The waters within the area enclosed by the heavy black line in the following map:

* * * * *

13. The title for parts 1080–1089 is proposed to be revised to read as follows:

PARTS 1080–1089—FREIGHT FORWARDERS—GENERAL

PART 1080—[REMOVED]

14. Part 1080 is proposed to be removed.

15. Part 1081 is proposed to be revised to read as follows:

PART 1081—BILLS OF LADING

Authority: 49 U.S.C. 10701, 10702, 10730, 10741, 10766, 10927, 11101, and 11707.

§ 1081.1 Bills of lading.

Every household goods freight forwarder (HHGFF) shall issue the shipper through bills of lading, covering transportation from origin to ultimate destination, on each shipment for which

it arranges transportation in interstate commerce. Where a motor common carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the HHGFF's name, the HHGFF, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of the date the carrier receives the shipment.

PART 1083—[REMOVED]

16. Part 1083 is proposed to be removed.

17. Part 1084 is proposed to be revised to read as follows:

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

Sec.

Authority: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

§ 1084.1 Definitions.

(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to Commission jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle: (1) A tractor that draws a trailer or semitrailer; and (2) a truck and trailer bearing a single load.

§ 1084.2 General requirements.

(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 1043.2(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

§ 1084.3 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 1043.2.

§ 1084.4 Surety bonds and certificates of insurance.

(a) The limits of liability under § 1084.3 may be provided by aggregation under the procedures at 49 CFR Part 1043.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the Commission shall be amended by attachment of the appropriate endorsement prescribed by the Commission (or the Department of Transportation, where applicable).

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized to issue such bonds or underlying insurance policies: (a) In each State in which the HHGFF is authorized to operate; or (b) in the State in which the HHGFF has its principal place of business or domicile, and will designate in writing upon request by the Commission a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the HHGFF operates, or (c) in any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

§ 1084.6 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will approve the application of a freight forwarded to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The Commission will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 10927(c).

§ 1084.7 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 1043.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the Commission receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the Commission.

§ 1084.8 Acceptance and revocation by Commission.

The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§ 1084.9 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 1043.10(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the Commission for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the Commission receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with § 1084.7(d).

PART 1085—[REMOVED]

18. Part 1085 is proposed to be removed.

19. Part 1091 is proposed to be revised to read as follows:

PART 1091—ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.
1091.1 Definition.
1091.2 Tariff information and election of service method.

Authority: 49 U.S.C. 10101–10103, 10301, 10306, 10311, 10321, 10502, 10521, 10561, 10562, 10701–10705, 10708, 10721–10724, 10741–10744, 10761–10763, 10766, 10921, 10922, 10928, 11101, 11102, 11108, 11349, 11501, 11502, 11701, 11702, 11705, 11706, 11708, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1091.1 Definition.

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a water common carrier subject to the Shipping Act, 1916, as amended, by an irregular-route motor common carrier authorized by the Interstate Commerce Commission to transport property in interstate or foreign commerce between points in Alaska, on the one hand, and, on the other, any point in the contiguous United States, for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and, on the other, a seaport on the West Coast of the contiguous United States.

§ 1091.2 Tariff information and election of service method.

Motor carriers using AMOM Service may publish tariffs setting forth different charges for AMOM and all-highway services. The tariff publications must allow the shipper to choose whether AMOM or all-highway service shall be used, and that, absent an election, the shipment will be transported over the lower-cost service. Tariffs embracing AMOM Service charges, including substituted service directories, if used, shall also set forth the underlying operating rights (overhead) relied upon, the service covered by the published charges, the points of substitution between modes of transportation, and the names of the participating carriers.

20. The heading of part 1104 is proposed to be revised to read as follows:

PART 1104—FILING WITH THE COMMISSION—COPIES—VERIFICATION—SERVICE—PLEADINGS, GENERALLY

21. Part 1136 is proposed to be revised to read as follows:

PART 1136—RAIL PASSENGER CARRIER COMMUTATION OR SUBURBAN FARE INCREASES

Authority: 49 U.S.C. 10321, 10707, 10708; 5 U.S.C. 559.

§ 1136.1 Filing and service requirements.

A rail passenger carrier proposing commutation or suburban fare increases shall concurrently file appropriate tariffs with the Commission and serve supporting verified statements on the Commission (at its headquarters office and at each Commission office in States affected by the proposal) and on the Governor and appropriate State or County regulatory agency in each affected State, certifying that the notice requirements of 49 CFR 1312.5 have been met.

22. Part 1143 is proposed to be revised to read as follows:

PART 1143—PREEMPTION OF STATE JURISDICTION: PASSENGER RATES

Sec.
1143.1 Applicability.
1143.2 Commission jurisdiction.
1143.3 Petition.
1143.4 Notification procedures.
1143.5 Opposition; deadlines.
1143.6 Rebuttal.

Authority: 49 U.S.C. 10321 and 11501(e); 5 U.S.C. 553.

§ 1143.1 Applicability.

These rules govern petitions for review, under 49 U.S.C. 11501, of State regulation of rates, rules, and practices of interstate passenger carriers providing intrastate service. (Commission preemption of State jurisdiction over passenger exit is covered at 49 CFR part 1169.)

§ 1143.2 Commission jurisdiction.

If an interstate passenger carrier has requested of a proper State authority permission to establish an increased intrastate rate, rule, or practice and all or part of the request has been denied, or the State has not taken final action (in whole or in part) on the request within 120 days, the carrier may petition the Interstate Commerce Commission for review.

§ 1143.3 Petition.

A petition for review shall include the following.

(a) A cover sheet indicating that the filing is authorized under 49 U.S.C. 11501 and that a decision must be made within 60 days.

(b) A copy of the entire State record, if available, and other new, relevant evidence. (If the basis for the petition is State inaction, petitioner shall also submit a statement by counsel or a verified statement by a competent witness that the State has not acted within 120 days after the request.)

(c) Written argument detailing reasons for review.

(d) Certification that the notification procedures at § 1143.4 have been met.

§ 1143.4 Notification procedures.

The petition for review shall be served, no later than its filing date, on the State Governor, the State authority, and on all parties to the State proceeding.

§ 1143.5 Opposition; deadlines.

Opposition statements may be filed as a matter of right by the Governor, the State authority, or by any party to the State proceeding within 15 days after the petition is filed. All others wishing to participate shall file a petition for leave to intervene within 15 days after the filing. Opposition statements and petitions to intervene shall include argument establishing that the State action was reasonable and may also address any new evidence submitted by petitioner. Petitions to intervene shall also explain why an appearance was not entered in the State proceeding but is appropriate in the Commission proceeding.

§ 1143.6 Rebuttal.

Rebuttal to an opposition statement shall be filed within 20 days after the petition is filed. Rebuttal to an intervention petition shall be filed within 10 days after such petition is filed.

23. Part 1161 is proposed to be revised to read as follows:

PART 1161—ISSUANCE UNDER 49 U.S.C. 10931 OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS

Sec.
1161.1 Applicability.
1161.2 Notice.
1161.3 State application proceedings.
1161.4 Application for Certificate of Registration.
1161.5 Appeal of State decision.

Appendix—Form of Notice of Filing State Application

Authority: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

§ 1161.1 Applicability.

These rules govern applications for Certificates of Registration based on intrastate certificates issued by a State that concurrently find that the public convenience and necessity require operations in interstate and foreign commerce.

§ 1161.2 Notice.

An applicant for a Certificate of Registration shall notify the appropriate State authority of such filing consistent with its rules. Notice to interested persons will be given by publishing in the *ICC Register* a summary of the authority sought (prepared by the State in the form described in the appendix). The summary must be sent to the Interstate Commerce Commission sufficiently in advance of any State hearing on the application to afford interested persons a reasonable opportunity to be heard. No other notice is necessary, unless required by the State.

§ 1161.3 State application proceedings.

State rules govern the conduct of the State proceeding. Protests and requests for information will be directed to the State. The record in the State proceeding will be made available to the parties upon payment of costs prescribed by the State.

§ 1161.4 Application for Certificate of Registration.

(a) *Time for filing.* Within 30 days after service of the State certificate (containing the recitations required by 49 U.S.C. 10931), applicant shall file with the Commission an Application for Motor Certificate of Registration, Form OP–OR–100. Except for cause shown, failure to file an application within the 30-day period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* The Commission will give notice of the application's filing date and docket number to the applicant and to all interested persons in the State proceeding.

(c) *Parties.* Any party that opposed the authorization of operations in interstate or foreign commerce in the State proceeding will be considered a party in the Certificate of Registration proceeding. Other persons may participate only upon a showing of good cause.

§ 1161.5 Appeal of State decision.

Any opposing party may file an appeal with the Commission within 30 days after the application for a Certificate of Registration is filed. The appeal should include a certified copy of the complete record made before the State (including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing, unless the record has already been filed by another party). Applicant may file a reply to an appeal within 20 days. Copies of each appeal and reply shall be served on the State Commission and on all parties to the State proceeding. The filing of an appeal will not affect the institution of intrastate operations under the State certificate. Failure to file an appeal waives further participation in the Certificate of Registration proceeding. The application and related appeals will be handled in a single proceeding. A Commission decision is final.

Appendix—Form of Notice of Filing State Application

Part I

(To be completed by applicant)

Notice is given that applicant has filed with

_____

(Name of State Authority)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

_____

1. (Name and business address of applicant)

_____

(Street) (City) (State)

_____

2. (Name and address of applicant's representative, if any)

_____

(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce.

_____

(Signature)

_____

(Title)

Date _____, 19_____.

Part II

(To be completed by State Authority)

Date of filing application _____

Docket number assigned _____

Date, time, and place application has been assigned for hearing, if known

_____

_____

(Signature)

_____

(Title)

_____

(Name of State Authority)

Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, _____, 19_____.

24. Part 1167 is proposed to be revised to read as follows:

PART 1167—COMPENSATED INTERCORPORATE HAULING

Sec.
1167.1 Applicability.
1167.2 Notification.
1167.3 Change in participation.

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

§ 1167.1 Applicability.

Compensated transportation service by a member of a corporate family for other members of the same family (Compensated Intercorporate Hauling or CIH) is exempt from Interstate Commerce Commission regulation if proper notice is given. To qualify for the exemption, the participants must be members of a corporate family in which the parent owns, either directly or indirectly, a 100 percent interest in the subsidiaries. However, no corporation operating chiefly as a for-hire carrier may use an affiliate operating under the exemption of 49 U.S.C. 10524(b) to transport freight tendered to it as a carrier.

§ 1167.2 Notification.

(a) *General requirements.* The corporate parent seeking to initiate CIH must submit a **Federal Register** notice is follows:

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling

operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(b) *Affidavit and declaration.* The notice shall include the following affidavit and declaration (which need not be notarized) by a person legally qualified to act for the parent:

I, _____, affirm that _____ is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

_____

(Signature and date)

(c) *To whom notice sent.* The original and one copy of the notice of intent to engage in CIH shall be sent to the Commission in an envelope marked: "CIH Notice." The Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and giving a projected publication date. CIH operations may commence as soon as the required notice is placed in the mails or, if hand-delivered, upon receipt at the Commission's office.

(d) *Cover letter requirement.* Where the office that has prepared a notice for a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(e) *Miscellaneous.* The filing of a CIH notice does not initiate a proceeding before the Commission. Publication of a notice is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation nor does it create a right of protest.

(f) *Fees.* All required filings shall include the appropriate fee. *See* 49 CFR part 1002.

§ 1167.3 Change in participation.

(a) If the parent intends that an additional subsidiary participate in CIH, it shall file un updated notice.

(b) Whenever the corporate parent's interest in a subsidiary participating in CIH become less than 100 percent, operations under 49 U.S.C. 10524(b) by or for that subsidiary shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices shall be submitted in the format required by § 1167.3(a), and will be published in the **Federal Register.**

(d) An updated notice need not be filed where an action by a corporate family affects the status of a member participating in CIH, but the scope of the operations remains unchanged—*e.g.*, absorption of a subsidiary into a parent resulting in extinction of its separate corporate status. However, name changes require an updated notice.

25. Part 1169 is proposed to be revised to read as follows:

PART 1169—PREEMPTION OF STATE JURISDICTION: PASSENGER EXIT

Sec.

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.1 Applicability.

These rules govern petitions by motor passenger common carriers to discontinue regular-route service over any route in a State, or to reduce the level of service over a route to less than one trip per day (excluding Saturdays and Sundays). (Commission preemption of State jurisdiction over passenger rates is covered at 49 CFR part 1143.)

§ 1169.2 Petition.

The petition shall contain the following information:

(a) On a cover page: (1) Petitioner's name, "MC" number, and mailing address; (2) the words "Exit Petition:", followed by the affected State (a separate petition must be filed for each such State); and (3) the termini of the route(s) on which petitioner proposes to discontinue or reduce service.

(b) Verified statement(s) containing the following information: (1) Description of petitioner's pertinent operations and how they would be affected by the proposed discontinuance or reduction in service (petitioner must hold both interstate and intrastate authorities over the route(s); copies of such authorities, showing service dates, must be attached);

(2) Certification that petitioner requested the State's approval for the proposed discontinuance or reduction in service (indicating the date of such request), and the State either failed to act within 120 days or denied all or part of the request (a copy of the State decision must be attached); the petition shall be filed within 90 days after the final State action or inaction;

(3) Certification that petitioner is not controlled by a State or local government;

(4) Annual interstate and intrastate passenger and package express revenues generated by the service to be discontinued or reduced (but not including revenues which petitioner expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumptions underlying the calculation;

(5) Description of the rates and pricing practices applicable to the affected service;

(6) Variable cost of operating the affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculation (assumptions should be consistent with those used to estimate revenue);

(7) Description of any current operating subsidies or financial assistance applicable to the affected service, and of any proposals or discussions concerning operating subsidies or financial assistance during the year preceding the filing of the petition; and

(8) Description of other passenger transportation available on the affected route(s).

(c) If petitioner proposes to discontinue service, a request for revocation of its pertinent interstate authority; and

(d) Certification that copies of the petition have been served on: (1) The Governor of the State in which the transportation is provided; (2) the appropriate State regulatory body; (3) local governments in the affected areas; and (4) each party to any related State proceedings.

§ 1169.3 Objections.

(a) The Commission must receive an objection within 20 days after the petition is filed.

(b) The objection must contain at least the following information:

(1) Description of any operating subsidies or financial assistance known to have been offered petitioner to continue the involved service;

(2) Description of the adverse effect the proposed discontinuance or reduction in service would have on the traveling public, on the communities served, or on others; and

(3) Analysis of the interstate and intrastate revenues derived from the service, the pricing practices applied to the service, and the variable costs of operating the service.

(c) Within 15 days after an objection is filed, petitioner must furnish to the Commission and to each objector an estimate of, and data necessary to

determine the amount of, any annual subsidy or financial assistance required to continue the service. At the same time, petitioner may file rebuttal.

§ 1169.4 Commission action.

The Commission must take final action on a petition within 90 days after it is filed. The 90-day period will not begin to run until the petition is complete. If no objections are received within 20 days after a complete petition is filed, the Commission will grant the petition and revoke any pertinent interstate authority. The effective date will be 30 days after the decision is served. If timely objections are filed, the Commission will consider the evidence on the written record. There will be no oral hearing. Appeals are governed by 49 CFR 1115.3(b).

§ 1169.5 Offers of subsidies; continuation of service.

(a) Any financially responsible person who intends to offer petitioner an operating subsidy or financial assistance so it may continue providing the service, must notify the Commission and petitioner within 50 days after the petition is filed.

(b) The Commission may order petitioner to continue the affected service for 165 days after the petition is filed—even if permission to discontinue or reduce service is otherwise granted, but before it has become effective—if there is a responsible offer of subsidy or financial assistance that is reasonably likely to induce petitioner to continue the service voluntarily, or if additional time is needed to allow another carrier to take over the involved operations.

26. Part 1170 is proposed to be revised to read as follows:

PART 1170—EMPLOYEE PROTECTION FOR MOTOR PASSENGER CARRIERS

Sec.

Authority: 49 U.S.C. 10321; 5 U.S.C. 553; and Pub. L. 97–261, sec. 27.

§ 1170.1 Applicability.

Section 27 of the Bus Regulatory Reform Act of 1982 is designed to protect employees of bus companies who lose their jobs because of reduction or discontinuance of regular-route bus service. These rules govern applications under section 27 by individuals seeking a determination of eligibility for protection. To be eligible for protection in the form of priority in seeking reemployment, the individual must have worked for a bus company on or before September 20, 1980, and have been fired after September 20, 1982 because of a reduction or discontinuance of regular-route bus operations. Furloughed personnel who have a right of recall by their employer are not eligible.

§ 1170.2 Application.

(a) The application shall contain the following information:

(1) The caption "Bus Employment Protection Application", at the top of page one;

(2) The individual's name and address;

(3) The full name and "MC" number of the carrier by whom the individual was employed;

(4) The dates on which the individual's employment with that carrier began and terminated;

(5) The reason(s) for the termination;

(6) The specific discontinuance or reduction of service that caused the termination; and

(7) The individual's occupational specialty.

(b) The lower left corner of the envelope should be marked: "Bus Employment Protection Application:", followed by applicant's full name. (If there is more than one applicant, list only one name and indicate the number of others.)

(c) A copy of the application must be sent to the carrier by whom the individual was employed.

§ 1170.3 Opposition.

(a) Any interested person may contest the application within 20 days after its filing.

(b) A letter or other written statement contesting an application shall include evidence showing that discontinuance or reduction in service was not a contributing factor to the termination of applicant's employment, and/or that the applicant or the circumstances are not covered by the statutory criteria.

(c) The lower left corner of the envelope should be marked: "Bus Employment Protection Opposition:", followed by the applicant's name as prescribed at § 1170.2(b).

(d) Applicant may reply to any opposition within 15 days after it is filed. A motion must be filed within 15 days after the pleading it addresses is filed.

§ 1170.4 Commission action.

A decision disposing of an unopposed application will be served within 30 days after the application is filed. If the application is contested, a decision will be served within 60 days after the application is filed. Appeals are governed by 49 CFR 1115.2.

§ 1170.5 List of available jobs.

(a) Every carrier having annual gross revenues of over $3,000,000 derived from motor passenger common carrier operations shall, and any other motor passenger common carrier may, furnish to any Commission regional office a monthly list of available jobs, unless the carrier has no new job openings. The list must include a job description, job location, and the skills required for each available position.

(b) The Commission will publish and make available at all its offices a comprehensive list of available jobs, entitled *Jobs Available From Class I Motor Passenger Carriers.* A copy of the list will be mailed to each applicant, and to each eligible individual for 6 months following the Commission's determination of his eligibility, subject to renewal at his request. Additional copies will be available by paid subscription. Information may be obtained from the Office of the Secretary, Public Records Section, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

27. Part 1331 is proposed to be revised to read as follows:

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 TO ESTABLISH OR CONTROL AGREEMENTS BETWEEN OR AMONG CARRIERS

Sec.

Authority: 49 U.S.C. 10706 and 10321.

§ 1331.1 Form and content of application.

The application and supporting exhibits shall conform to 49 CFR Part 1104 and shall show, in the order and with the paragraph designations indicated, the following:

(a) Full name and business address of the carrier applicant(s); whether each applicant is a corporation, individual, or partnership; if a corporation, the State of incorporation; and if a partnership, the names of the partners and date of the partnership's formation.

(b) Full name and business address of each entity on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) Whether applicant and each entity on whose behalf the application is filed is a rail, motor, or water carrier, a household goods freight forwarder, or

express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

§ 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization: (1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1; (2) as Exhibit 3, an organization chart; and (3) as Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 1331.3 Procedure.

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been served.

(b) The Commission will publish in the **Federal Register** a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR Part 1104.

(d) The Commission's general rules of practice govern procedural matters not specifically covered by these rules.

§ 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at § 1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49 U.S.C. 10706(d)).

§ 1331.5 Retaining antitrust immunity.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Commission. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Commission approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A "general increase" is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A "broad change in tariff structure" modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An "innovative fare" will be determined on a case-by-case basis; the Commission will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are: (i) A fare for unlimited passenger travel; and (ii) an experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A "promotional fare" generally has three characteristics: (i) Limited duration; (ii) attractive price or level of service quality; and (iii) some added feature in addition to those normally offered.

[FR Doc. 89-23827 Filed 10-10-89; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 90880-9180]

RIN 0648-AD02

Depletion of the Coastal-Migratory Stock of Bottlenose Dolphins in the Mid-Atlantic

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: Based on a review of the best available information on the status of the coastal-migratory stock of bottlenose dolphins in the U.S. mid-Atlantic, the National Marine Fisheries Service (NOAA Fisheries) is considering publication of a proposed rule designating this population stock as depleted under the Marine Mammal Protection Act (MMPA). This section is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). If this population stock is designated as depleted, the MMPA requires the application of certain additional restrictions on taking and importation, and the preparation and implementation of a conservation plan to restore the sock to OSP. NOAA Fisheries is also requesting any additional scientific information on this action that may be available from interested parties, as required by the MMPA Amendments of 1988.

DATE: Comments or additional scientific information must be submitted on or before December 11, 1989.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Hwy., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 301-427-2289.

SUPPLEMENTARY INFORMATION:

Background

During the summer and fall of 1987 and early 1988, an unusually large number of Atlantic bottlenose dolphins (*Tursiops truncatus*) were found dead and washed ashore (stranded) along the

U.S. east coast from New Jersey to central Florida. A number of state and Federal agencies investigated the causes and effects of this mass mortality event (die-off). The following report on the cause of the die-off is available by writing to the **ADDRESS** listed above.

Geraci, J.R. 1989. Clinical investigation of the 1987–88 mass mortality of bottlenose dolphins along the U.S. central and south Atlantic coast. Final Report to the National Marine Fisheries Service, U.S. Navy, Office of Naval Research, and the Marine Mammal Commission, April, 1989.

Dr. Geraci's report describes the evidence implicating a biological toxin as the proximate cause of the die-off. The dolphins were apparently poisoned by brevetoxin, a neurotoxin produced by the dinoflagellate *Ptychodiscus brevis*, Florida's red tide organism. Contributing to the ultimate demise of the animals was a host of microbial and environmental factors. Dr. Geraci also noted the possibility that high contaminant levels found in the dolphins' tissues (e.g., organochlorines) may have affected their resilience and rendered them more susceptible either to the toxin or to the microorganisms that eventually killed them.

NOAA's Southeast Fisheries Center reports on stock structure and abundance of the Atlantic bottlenose dolphin and has assessed the impact of the dolphin die-off. Copies of the following publications, which form the basis of our discussion of bottlenose dolphin status under the MMPA, are available by writing to the Coastal Resources Division, Southeast Fisheries Center, NOAA Fisheries, 75 Virginia Beach Drive, Miami, FL 33149:

Scott, G.P., D.M. Burn and L.J. Hansen. 1988a. The dolphin die-off: Long-term effects and recovery of the population. Proceedings of the Oceans '88 Conference. Baltimore, MD. October 31–November 2, 1988. pp. 819–823.

Scott, G.P., L.J. Hansen and D.M. Burn. 1988b. Preliminary report: status of the bottlenose dolphin stocks in the US Gulf of Mexico and US Atlantic Ocean. Southeast Fisheries Center, Miami, FL, Coastal Resources Division Contribution CRD–87/88–23.

Burn, D.G. and G.P. Scott. 1988. Synopsis of available information on marine mammal-fisheries interactions in the southeastern United States: Preliminary Report. Southeast Fisheries Center, Miami, FL, Coastal Resources Division Contribution CRD–87/88–26.

Hersh, S.L. 1988a. Age class distribution of bottlenose dolphins stranded during the east coast die-off of 1987/88. NOAA Fisheries/Southeast Fisheries Center Contract Report. 45–WCNF–800633.

Hersh, S.L. 1988b. Analysis of skull and body morphometrics of bottlenose dolphins stranded during the 1987/1988 east coast die-off. NOAA Fisheries/SEFC Contract Report. 45–WCNF–800633.

Hersh, S.L. 1987. Stock structure of bottlenose dolphins (Genus *Tursiops*) in the southeastern U.S.: a review and management considerations. Final Report to NOAA Fisheries, Southeast Fisheries Center. Contract No. 40GF700715.

Rulemaking petition

The Center for Marine Conservation (CMC; formerly Center for Environmental Education) petitioned NOAA Fisheries, on November 11, 1988, to begin informal rulemaking to list the U.S. mid-Atlantic, coastal-migratory stock of bottlenose dolphins as depleted under the MMPA. On December 10, the CMC amended its petition with additional information and concerns regarding stock differentiation. CMC noted the scientific debate on the geographic "distinctness" of the coastal population and stated that all dead animals cannot with certainty be assigned to a coastal stock. In re-stating its position, the CMC recommended that NOAA Fisheries proceed with a depletion designation until such time as the question of stock differentiation is resolved. As discussed below, NOAA Fisheries believes that the stranded animals were primarily from a separate, coastal stock that migrates between Florida and New Jersey. Copies of the CMC's rulemaking petitions are available from the Information Contact listed above.

The MMPA Amendments of 1988 (Public Law 100–71) added a new section 115 to provide specific timetables and procedures for conducting status reviews, for rulemaking on depletion, and for preparing conservation plans for marine mammals. In this instance, no petition for a status report was received since the report was already completed and available in June, 1988 (Scott et al. 1988b). Based on information provided in the status report, CMC petitioned NOAA Fisheries to begin rulemaking procedures necessary to designate this stock as depleted under the MMPA. Before rulemaking can begin, however, new subsection 115(a)(2) requires publication in the **Federal Register** of a call to assist the Secretary [of Commerce] in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent feasible, informal working groups of interested parties and other methods to gather the necessary information.

NOAA Fisheries finds that CMC's petition has substantial merit and is giving serious consideration to proposing this stock for depleted status. This advance notice of proposed rulemaking incorporates the "call for assistance" required by section 115(a)(2) and a summary review of the 1988 status report. Based on a review of any scientific submissions received as a result of this notice, and all comments received on our proposal, NOAA Fisheries will determine, prior to publication of any proposed rule, whether there is a need for informal working groups to gather additional information.

Status Report Summary

1. Stock Structure

Bottlenose dolphins are found in the U.S. Gulf of Mexico and in U.S. Atlantic waters. In the U.S. Atlantic, this species is found from Long Island, NY to the Florida Keys. North of Cape Hatteras, NC, bottlenose dolphins have a disjunct distribution with concentrations along the coast (in embayments and within several kilometers of the coast) and offshore near the continental shelf margin (from 60 to 200 kilometers from the coast). South of Cape Hatteras, the coastal/offshore distribution is less distinct.

During summer in the U.S. Atlantic, bottlenose dolphins are distributed along the coast as far north as Long Island, NY and offshore as far north as Nova Scotia, Canada. The main summertime, coastal bottlenose dolphin concentration is from North Carolina to New Jersey. During autumn, density distribution patterns observed from population surveys suggest that coastal animals migrate south to Florida. During winter, bottlenose dolphins in coastal U.S. Atlantic waters are distributed from south of Cape Hatteras to the northern and central Florida coast, but concentrate at the southern end of this range. During spring, concentrations shift northward along the coast to complete a hypothesized migratory cycle. It is not clear whether the offshore population follows a similar north-south pattern.

There appear to be both near-shore (coastal) and offshore stocks of bottlenose dolphins along the U.S. Atlantic coast and in other ocean areas. There are apparent morphological and biochemical differences between the coastal and offshore stocks found in South Africa, the eastern North Pacific and in the southeastern United States. For example, offshore animals are generally larger and have higher

concentrations of hemoglobin than coastal or warmer-water stocks. Some animals with intermediate blood characteristics have been found in the wild, suggesting some, probably low, frequency of genetic exchange between stocks. Within the coastal population there are probably local, resident stocks in certain embayments (e.g., near Savannah, GA) and a stock that migrates into and out of these embayments on a seasonal basis (coastal-migratory stock). The stranding data collected during 1987 and 1988, and the observed density distribution patterns along the U.S. Atlantic coast, support the hypothesis of a single coastal-migratory stock of bottlenose dolphins that ranges seasonally as far north as Long Island, NY and as far south as central Florida.

Both coastal-migratory and offshore stocks may have been affected by the die-off. The likelihood of an animal dying offshore, however, and then being stranded onshore is expected to be considerably less than for an animal dying near the coast. Thus, reported strandings may not include offshore animals that did not come ashore. Of 36 blood samples taken from affected animals, 35 exhibited coastal hemoglobin characteristics. One sample showed hybrid coastal/offshore characteristics. Resident, local stocks were apparently unaffected by the die-off. Best available information suggests that the observed mortality may have primarily affected the coastal-migratory stock of dolphins that ranges between Florida and New Jersey.

2. Population Abundance

Historically, about 15,000 bottlenose dolphins are thought to have lived in mid-Atlantic coastal waters (including coastal-migratory and resident stocks) based on records from the turn of the century. In 1979–81, the estimated average mid-Atlantic summer abundance of bottlenose dolphins is believed to have ranged from 4,300 to 12,900 animals (95% confidence level) including both coastal and offshore stocks, i.e., the total U.S. mid-Atlantic population. The best available information suggests that, in recent times, coastal North Carolina and Virginia supported 1,200 or more dolphins during part of the spring and summer. This number may have represented a substantial portion of the mid-Atlantic, coastal-migratory stock prior to the die-off. Population surveys of August, 1987 resulted in estimates of 350 to 1,300 animals in the coastal mid-Atlantic. Recent estimates may be conservative and represent surface abundance only.

The most direct way to assess the effect of the 1987–88 die-off on the dolphin population is to compare pre- and post die-off population abundance. In this case, consistent population abundance indices are not yet available; and, additional population survey data collection is needed from the northern and southern range of the stock. Consequently, potential impact of the die-off was estimated by comparing stranding rates reported during the die-off period to the prior 3-year average reported stranding rate. Inherent in this method of assessment is the assumption that reported stranding rate is a consistent index of stock mortality rate for the period of analysis.

During the 11 month period from June, 1987 through April, 1988, 742 stranded bottlenose dolphins were reported to the Smithsonian Institution's marine mammal stranding events program. This represents 10.11 times the average annual number of dolphins reported stranded during the previous three years. Assuming that the natural annual mortality rate is 7% (or 6.42% for 11 months), based on previously published reports, and assuming further that the rate of stranding is proportional to the mortality rate, the total mortality (m) during the 11 month period of the die-off can be estimated as $10.11 \times 6.42 = 64.9\%$. An annual birth rate (b) on the order of 11.5% has been estimated based on observations of the percent of calves in the coastal mid-Atlantic stock of dolphins affected by the die-off. Thus, a potential decline for this stock since early 1987 is estimated as $b-m = -53.4\%$

Higher assumed rates of natural mortality imply larger decreases in stock abundance. A review of the scientific literature suggests that rates of 5–10% may reasonably reflect the likely range of natural mortality in captive bottlenose dolphins. The relationship between captive dolphin natural mortality rates and wild population rates is unknown. Natural mortality rates in wild populations could be higher than in captive dolphins if (1) The risks of death due to natural causes such as disease, predation, and starvation are reduced in the captive environment, or (2) age classes with high rates of natural mortality in natural populations are under-represented in captive populations.

There are no available data to test the hypothesis that increased public awareness increases the probability of detection and reporting of stranded animals, nor to estimate the possible magnitude of change, especially along densely populated coastlines. Increases in this probability of more than 4-times over a 5–10% natural mortality range can result in estimates of population increase due to the die-off. An assumed doubling of the probability results in estimates of decline of 11.7%, 20.9%, and 34.8% for assumed annual natural mortality rates of 5%, 7%, and 10%, respectively. Alternate analysis of the stranding-rate data, stratifying over portions of the coast most densely populated, and for which increased public awareness would have the smallest expected impact on the probability of detecting and reporting strandings, consistently results in estimates of reduction greater than 40% over the 5–10% natural mortality rate range.

There is a large degree of uncertainty in the estimated magnitude of reduction in the dolphin population due to a lack of data and imprecision in estimates of natural mortality rates. Further data collection on population abundance levels and stock discreteness may reduce these uncertainties. On the basis of the best available information, however, NOAA Fisheries concludes that the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic probably declined by more than 50% as a result of the 1987–88 die-off.

3. Optimum Sustainable Population

The MMPA states that marine mammal species and population stocks should not be permitted to diminish below their OSP. NOAA Fisheries has defined OSP, in 50 CFR 216.3, as a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction and growth, less losses due to natural mortality. MNP is often represented as a percentage of carrying capacity. For example, in northern fur seals MNP occurs when the population is at about 60% of its carrying capacity. In general, populations of large mammals appear to grow most rapidly when at numbers greater than 50% of carrying capacity.

By analogy with other large mammal populations, the population level expected to result in MNP for bottlenose dolphins is greater than 50% of carrying capacity. However, because of uncertainties regarding abundance estimates, carrying capacity has not been estimated for Atlantic or Gulf stocks of this species. Although there remain a number of uncertainties, including total mortality during the die-off, available information for the mid-

Atlantic coastal-migratory stock suggests that this stock may have been reduced by more than 50% due to the die-off. Assuming this level of stock reduction and a stable but unknown carrying capacity, NOAA Fisheries believes that this stock is likely to be below OSP and, thus, depleted under the MMPA.

A significant reduction in food availability or major changes in physical environmental factors, i.e., atmospheric or oceanographic conditions, if demonstrated, could be evidence of a change in carrying capacity for bottlenose dolphins in the coastal mid-Atlantic. But, relatively short-term, natural or man-induced mortality factors, such as increases in naturally-occurring biotoxins, would not necessarily be of such a sustained or widespread occurrence as to constitute a change in the carrying capacity of this environment for this species. We have no evidence of significant, permanent changes in this ecosystem that might prevent bottlenose dolphins from eventually attaining pre die-off levels.

The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under * * * this Act, determines that a species or population stock is below its [OSP]." NOAA Fisheries will request consultation and concurrence by the Marine Mammal Commission before publishing a proposed rule regarding depletion of the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic.

Consequences of a Depletion Designation

The MMPA Amendments of 1988 included a new section 114 which replaces most earlier provisions for granting incidental take authority to commercial fishermen with an interim exemption system valid until October 1, 1993. The purpose of the new system is to provide better information on interactions between commercial fisheries and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' inability to make OSP determinations for all species affected by the fisheries. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries after October 1, 1993.

Depleted stocks may be taken under the interim exemption incidental to commercial fishing operations; however, no intentional lethal takes of depleted stocks or any cetaceans are authorized. Thus, a depletion finding for the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic will not necessarily affect commercial fisheries at least until 1993. If incidental take in a fishery is found to have a significant impact on a marine mammal population, NOAA Fisheries may issue emergency rules or conditions on exemptions under section 114 to mitigate adverse impacts.

Under the MMPA, small incidental takes that have a negligible impact on depleted stocks may be authorized for certain activities other than commercial fishing; and permits may be issued authorizing taking of depleted species for research purposes. The MMPA requires, however, that, when issuing a permit for research involving lethal taking from a depleted stock, NOAA Fisheries first determine that the research will directly benefit the stock, or that the research fulfills a critically important research need.

Depleted stocks may not be taken for public display purposes; however, the mid-Atlantic, coastal-migratory stock is not a source of public display animals. In recent years, permanent removals form the wild of bottlenose dolphins for public display have been authorized from Gulf of Mexico stocks and from the local population in the Indian-Banana River area on Florida's east coast. The status of these stocks relative to OSP has not yet been determined.

If the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic is designated as depleted, NOAA Fisheries will prepare a Conservation Plan, as required by section 115(b) of the MMPA, for the purpose of conserving and restoring the stock to its OSP. In addition to the status of the stock and the cause of its decline, the Plan will include: (a) An assessment of the existing and possible threats to this population such as pollution and commercial fishing, (b) a discussion of critical information needs such as post die-off abundance indices and stock differentiation, (c) a description of research and management objectives, and (d) a schedule for implementation.

Dated: October 3, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries

[FR Doc. 89-23898 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

San Bernardino National Forest, Indian Vista Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to manage the vegetation in the vicinity of Highway 243, north of Idyllwild, CA, where bark beetles have caused wide spread mortality in Coulter pine. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 15, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Charles H. Irby, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and environmental impact statement to Douglas Pumphrey, District Ranger, San Jacinto Ranger District, P.O. Box 518, Idyllwild, CA 92349, Telephone: (714) 659–2117.

SUPPLEMENTARY INFORMATION: The San Bernardino National Forest Land and Resource Management Plan was completed in January 1989. The management direction in the Plan called for watershed emphasis with the specific prescriptions being dispersed recreation/watershed in conifer on slopes less than 30% and custodial on slopes from 30% to 50%.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no treatment. Other alternatives will consider treatment of the site to reestablish conifer vegetation with and without the use of herbicides. The project is designed to reforest conifers, in the chaparral/conifer transition zone. Conifers are critical to a variety of wildlife species.

Charles H. Irby, Forest Supervisor, San Bernardino National Forest, San Bernardino, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping processing includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the potential project area.

The District Ranger will hold a public scoping meeting in the Idyllwild Town Hall, 25925 Cedar Street, Idyllwild, California at 1 p.m., Wednesday, November 1, 1989. The meeting will include a trip to a location to overlook the project site.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March 1990. At that time EPA will publish a notice of availability of the DEIS is the Federal Register.

The comment period on the draft environmental impact statement will be 30 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the Indian Vista Project participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978), and the environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed by June 1990. In the final EIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject

to appeal pursuant to 36 CFR 217.3 (Federal Register, Vol. 54 No. 13, January 23, 1989, pages 3357 to 3362).

Dated: October 4, 1989.

Charles H. Irby,

Forest Supervisor.

[FR Doc. 89-23947 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

McElmo Creek Unit, Salinity Control Study, Colorado; Availability of a Record of Decision

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Sheldon G. Boone, responsible Federal official for projects administered under the provisions of Public Law 93-320, 43 U.S.C. 1592 in the State of Colorado, is hereby providing notification that a record of decision to proceed with the installation of the McElmo Creek Unit, Salinity Control Program is available. Single copies of this record of decision may be obtained from Sheldon G. Boone at the address shown below.

FOR FURTHER INFORMATION CONTACT: Sheldon G. Boone, State Conservationist, Soil Conservation Service, 655 Parfet Street, Rm E200C, Lakewood, CO 80215-5517, telephone (303) 236-2886.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.070—Colorado River Salinity Control—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: October 2, 1989.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 89-23903 Filed 10-10-89; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Kentucky Advisory Committee; Cancellation of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission scheduled to convene at 2:00 p.m. and adjourn at 5:00 p.m. on Thursday, October 19, 1989, at the Radisson Plaza Hotel, Broadway & Vine, Lexington, Kentucky, has been cancelled. The purpose of the meeting was to review Advisory Committee projects, discuss current civil rights issues in the State and plan future activities. The notice of the meeting was published at 54 FR 40903 (October 4, 1989).

Persons desiring additional information should contact Committee Chairperson, Porter G. Peeples, Sr., or Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253, (TDD 816/426-5009).

Dated at Washington, DC, October 4, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-23858 Filed 10-10-89; 8:45 am]

BILLING CODE 6335-01-M

Massachusetts Advisory Committee; Postponement of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission, originally announced for October 12, 1989, at the John F. Kennedy Federal Building, Cambridge and New Sudbury Streets, Boston, Massachusetts, has been postponed. The new date is Thursday, November 2, 1989, from 1:30 to 4:00 p.m., and the new location is Conference Room 1008 of the Thomas P. O'Neill Federal Building, 10 Causeway Street, Boston, Massachusetts. The purpose of the meeting remains the same as previously published at 54 FR 39218 (September 25, 1989).

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Dororthy S. Jones (617/498-9238) or John I. Binkley, Director of the Eastern Regional Division, at (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, October 4, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-23859 Filed 10-10-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration, Commerce.

Title: Sea Grant Project Summary.

Form Number: NOAA Form 90-2; OMB—0648-0019.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 40 respondents; 240 reporting hours; average hours per response—.33 hours.

Needs and Uses: Applicants for Sea Grants must supply information on their proposed project. The information is used to evaluate whether funding should take place.

Affected Public: Non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Russell Scarato, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 4, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-23871 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-CW-M

[Docket No. 951-193]

Hearing in the Matter of Gary Gentile, Respondent

The informal hearing provided for in § 924.8(c) of the regulations (15 CFR 924.8(c)) relating to the denial of appellant's request to conduct underwater photography or similar activities within the Monitor National Marine Sanctuary, will be held in Hearing Room 2409 at 401 M Street,

SW., Washington, DC at 10 a.m. on October 18, 1989.

Dated: October 4, 1989.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 89-23971 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-GF-M

Bureau of Export Administration

[OEE-1-89]

Order Renewing Temporary Denial of Export Privileges; Franciscus Govaerts et al.

In the matter of
Franciscus B. Govaerts, individually and doing business as Printlas Europa Torenakker 8-5731 CC, Mierlo, Netherlands and
Goris Christiaan Grandia, individually and doing business as Grandia Project Services with addresses at Laurierstraat 59 1016 PH, Amsterdam, Netherlands and Gudrunstrasse 121 A 1100, Vienna, Austria and
Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., Sijpstraat 6, 9101 Lokeren, Belgium, and
Roger Van Alphen, Populieresloantje 8, Huizen, Netherlands: Respondents.

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (15 CFR parts 768-799) (the Regulations),[1] issued pursuant to the Export Administration Act of 1979 (50 U.S.C. app. Sections 2401-2420 (1982 and Supp. III 1985), as amended by Public Law 100-418, 102 Stat. 1107 (August 23, 1988)) (the Act), has asked the Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Franciscus B. Govaerts (Govaerts), individually and doing business as Printlas Europa (Printlas Europa); Goris Christiaan Grandia (Grandia), individually and doing business as Grandia Project Services; Marcel Sanders (Sanders), individually and doing business as Belgium Trading Company Lokeren S.A. (Belgium Trading), and Roger Van Alphen (Van Alphen) (collectively referred to as respondents). The initial order was issued on April 6, 1989 (54 FR 14667, April 12, 1989).

In its renewal request of September 14, 1989, the Department states that it continues to have reason to believe that an order temporarily denying the export privileges of Govaerts, individually and doing business as Printlas Europa; Grandia, individually and doing business as Grandia Project Services; Sanders, individually and doing business as Belgium Trading, and Van Alphen is necessary in the public interest to prevent an imminent violation of the Regulations.

In its initial request, the Department stated that, as a result of an investigation conducted by the Department and the U.S. Customs Service (Customs), it had reason to believe that from a date unknown to on or about December 9, 1988, Govaerts, Grandia, Sanders and Val Alphen, while doing business under the names of their respective companies, sought to obtain U.S.-origin equipment, controlled for reasons of national security, and to export that equipment from the United States to Bulgaria, knowing that the Department would not likely authorize the export of the equipment to Bulgaria.

The investigation had revealed that, on or about December 9, 1988, Govaerts, with the aid of Grandia, Sanders and Van Alphen, in fact attempted to export the equipment from the United States through the Netherlands to Bulgaria, by falsely declaring that the country of ultimate destination was the Netherlands and that the equipment could be exported under general license G-DEST. Each of those individuals had been indicted for his respective role in this matter.

The investigation also had given the Department reason to believe that Govaerts, Grandia, Sanders and Van Alphen have access to large sums of money and that, given the opportunity, they would use that money in the near future to acquire U.S.-origin equipment similar to that which Govaerts attempted to export in December 1988, and export that equipment to Bulgaria. Moreover, the Department had reason to believe that, if necessary, Govaerts, Grandia, Sanders and Van Alphen would use Belgian contacts to effect the export of that equipment to Bulgaria.

Since its initial request, there have been several developments. On June 28, 1989, Govaerts plead guilty to several counts and was sentenced to time served; he has since returned to Western Europe. On August 16, 1989, Sanders plead guilty to several counts and is in prison awaiting sentencing. While in prison, and before he plead guilty, Sanders was indicted for trying to bribe Govaerts, who was also in prison, by offering Govaerts $400,000 not to testify against him. To date this indictment has not been resolved.

As for Grandia, the Department states that he remains in Italy, released on bail, pending his extradition to the United States. Van Alphen remains at large, although on June 22, 1989, Van Alphen appealed the imposition of the initial temporary denial order; on July 18, 1989, the Acting Under Secretary for Export Administration denied that appeal (54 FR 30913, July 25, 1989).

Since the initial request, the Department continues to believe that, viewed as a whole, the past activities of Govaerts, individually and doing business as Printlas Europa; Grandia, individually and doing business as Grandia Project Services; Sanders, individually and doing business as Belgium Trading, and Van Alphen demonstrate that they are involved in a scheme to obtain controlled U.S.-origin commodities, and to export that equipment from the United States to Bulgaria.

Opposition to the renewal of the request for temporary denial was filed in a timely manner by Govaerts, individually and doing business as Printlas Europa, in a letter dated September 20, 1989. Govaerts states that while he had no intention to violate any export regulations in any country, he was encouraged by several parties to pursue the transaction that is the subject of investigation. Govaerts states that he made a mistake and has paid for it. He further states that he has cooperated with Customs since his arrest, and that this cooperation has been noted both by Customs and by the Assistant District Attorney in this matter.

The Department did not file a response to Govaerts' opposition. However, in its renewal request the Department did state that it expects to take administrative action against Govaerts in the not too distant future. It believes that a temporary denial order naming Govaerts is necessary, until that action is taken and a final Order issued, because, in the Department's view, Govaerts continues to present a threat to the national security of the United States.

Given that Govaerts admits his direct involvement in this matter and provides no support of his assertion of cooperation, and given the Department's statement that Govaerts continues to present a threat to national security, I am compelled to renew the temporary denial order with regard to Govaerts and his firm, Printlas Europa, at least until administrative action is complete. Should such action be taken prior to expiration of this order, the necessity of

[1] Effective October 1, 1988, the Regulations were redesignated as 15 CFR 768-799 (53 FR 37751, September 28, 1988). The transfer merely changed the first number of each Part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368-399 (1988).

maintaining this order with regard to Govaerts and Printlas Europa shall be considered.

No other opposition was filed in response to the Department's request for renewal. Therefore, based on the showing made by the Department, I find that an order temporarily denying export privileges to Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokersen S.A., and Roger Van Alphen appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Respondents Franciscus B. Govaerts, individually and doing business as Printlas Europa; Goris Christiaan Grandia, individually and doing business as Grandia Project Services; Marcel Sanders, individually and doing business as Belgium Trading Company Lokeren S.A., and Roger Van Alphen, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Govaerts, Grandia, Sanders, Van Alphen or any of their respective companies is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States and subject to the Act and the Regulations.

V. In accordance with the provisions of § 788.19(e) of the Regulations, respondents may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 180 days.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register.**

Dated: October 4, 1989.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 89–23924 Filed 10–10–89; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Export Trade Certificate of Review; Correction

ACTION: Notice of Application for an Amendment to an Export Trade Certificate of Review; Correction.

SUMMARY: On September 21, 1989, the Agency published the Notice of Application for an Amendment to an Export Trade Certificate of Review (FR 54 38954). This document corrects various errors that appeared in the Notice.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

Appendix A (corrected)

On page 38955 of FR 54 (September 21, 1989), third column, the entry for "Texas Enterprise Manufacturing &" should read "Texas Enterprise Manufacturing & Machine, Inc."

Appendix B (corrected)

On page 38956 of FR 54 (September 21, 1989), third column, the entry for "Excel Tech Machine Repair &" should read "Excel Tech Machine Repair & Scraping, Inc."

Dated: September 30, 1989.

Douglas J. Aller,

Office of Export Trading Company Affairs.

[FR Doc. 89-23863 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review of final determinations respecting new steel rail from Canada made by the U.S. International Trade Commission, which was filed by the Sydney Steel Corporation with the United States section of the Binational Secretariat on October 2, 1989.

SUMMARY: On October 2, 1989, the Sydney Steel Corporation filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final determinations made by the U.S. International Trade Commission (ITC) respecting new steel rail from Canada, ITC file numbers 701-TA-297 and 731-TA-422, and published in 54 FR 38751 on September 20, 1989. The Binational Secretariat has assigned Case Number USA-89-1904-09 to this Request for Panel Review. In addition, the Algoma Steel Corporation, Limited also filed a Request for Panel Review of the same final determinations on October 2, 1989.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for raplacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on October 2, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is November 1, 1989);

(b) a Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is November 16, 1989); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: October 3, 1989

James R. Holbein,

Acting U.S. Secretary, FTA Binational Secretariat.

[FR Doc. 89-23923 Filed 10-10-89; 8:45 am]

BILLING CODE 3510-DAM

DEPARTMENT OF DEFENSE

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Request for CHAMPUS Benefits Under the Program for the Handicapped; DD Form 2532 (formerly CHAMPUS Form 190a) and Request for CHAMPUS Benefits Under the Basic Program; DD Form 2533 (formerly CHAMPUS Form 190), OMB Control Number 0704-0099.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 30 Minutes.

Frequency of Response: Varies with the patient but for the majority is once annually.

Number of Respondents: 18,000.

Annual Burden Hours: 9,000.

Annual Responses: 18,000.

Needs and Uses: The Request for CHAMPUS Benefits Under the Program for the Handicapped and the Request for CHAMPUS Benefits Under the Basic Program are official applications for CHAMPUS benefits. They are used to ensure that CHAMPUS benefits are being provided only to those persons entitled to CHAMPUS benefits and that the requested benefits are appropriate and necessary. The form requests pertinent sponsor/beneficiary information necessary for issuing authorization for payment and the necessary information for issuing certification of the necessity and/or appropriateness of care.

Affected Public: Individuals or households, businesses or other for-profit institutions, non-profit institutions and small businesses or organizations.

Frequency: Continuing.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: October 4, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-23959 Filed 10-10-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Overseas Dependents Schools; National Advisory Panel on the Education of Handicapped Dependents

The National Advisory Panel on the Education of Handicapped Dependents will meet in open session from 9:00 a.m. to 4:00 p.m., October 12–13, 1989, at the Holiday Inn, 2460 Eisenhower Avenue, Alexandria, Virginia.

The mission of the Panel is to advise the Director, DoD Dependents Schools (DoDDS), of unmet needs within the system for the education of handicapped children, to comment publicly on rules and regulations proposed for issuance by the Office of Dependents Schools (ODS) concerning education for the handicapped and on procedures for distribution of funds, and to assist ODS in developing and reporting all data and evaluation as may assist the Director in performance of his responsibilities under section 618 of Public Law 94–142.

The Panel will review the following: The status of special education in DoDDS; DoDDS's response to Advisory Panel recommendations, personnel development, parent education, intradepartmental cooperation, administration, and the budget.

This meeting is open to the public, due to space constraints, anyone wishing to attend should contact the ODS coordinator, Trudy Paul, Special Education Coordinator, 2461 Eisenhower Avenue, Alexandria, Virginia 22331–1100, (202) 325–7810.

Dated: October 5, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–23960 Filed 10–10–89; 8:45 am]

BILLING CODE 3810–01–M

Department of Defense Advisory Committee on Uncompensated Overtime; Meeting

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the provisions of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that a meeting of the Department of Defense Advisory Committee on Uncompensated Overtime is scheduled to be held on October 27, 1989, from 1:00 p.m. to 4:00 p.m., at the U.S. Chamber of Commerce, Herman Lay Room, 1615 H Street NW., Washington, DC. This is the fifth meeting of the advisory committee. The meeting is open to the public.

The Department of Defense Advisory Committee on Uncompensated Overtime was established pursuant to section 804 of Public Law 100–456 (FY89 National Defense Authorization Act). The advisory committee is responsible for: (1) Developing criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) making recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the advisory committee shall address the following issues:

(A) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations;

(B) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and

(C) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and 2,080 hours per year.

FOR FURTHER INFORMATION: Persons desiring additional information or planning to attend the meeting should contact Mr. Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301–1900, telephone (202) 695–7249, not later than October 25, 1989.

Dated: October 5, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 89–23961 Filed 10–10–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Fund for the Improvement and Reform of Schools and Teaching Board; Open Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice supersedes the notice published Tuesday, October 10, 1989, and sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: October 19, 1989, 9:00 a.m.–5:30 p.m., October 20, 1989, 9:00 a.m.–12:00 noon.

ADDRESS: The Bellevue Hotel, 15 E Street, NW., The Lexington Room, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Richard T. LaPointe, Director, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524, (202) 357–6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board is established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Admendments of 1988 (Public Law 100–297). The Board is established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund. On October 19, 1989 the Board will introduce its new Board members, have a briefing on the Department's standards of conduct and committee management, approve the minutes of the July meeting, and discuss any subcommittee activities. The Board will also have a presentation of projects funded for fiscal year 1990, discuss the process for monitoring those projects, discuss the process for disseminating whatever results there are from the funded projects, and determine the agenda for and date of the next meeting.

On October 19, 1989 and again on October 20, the Board will be discussing priorities for the 1990 competitions of the Family-School Partnership Program and the Schools and Teachers Program. Individuals or groups unable to attend the meeting are encouraged to request a summary of the activities at this meeting.

On October 19, 1989, the Board will hold a joint meeting with the Fund for the Improvement of Postsecondary Education (FIPSE) Board from 4:00 p.m. to 5:30 p.m. at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting will involve discussion of possible joint activities related to partnerships between schools and universities or colleges.

The session on Thursday, October 19, from 9:00 a.m. to 4:00 p.m., and the session on Friday, October 20 from 9:00 a.m. to 12:00 noon, will both be held at the Bellevue Hotel at the above address.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for Improvement and Reform of Schools and Teaching, U.S. Department for Education, 555 New Jesey Avenue, NW., Room 522, Washington, DC 20208–5524 from the hours of 8:30 a.m. to 5:00 p.m.

Richard T. LaPointe,

Director, Fund for the Improvement and Reform of Schools and Teaching.

[FR Doc. 89–24014 Filed 10–10–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Conference Grant)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of acceptance of noncompetitive financial assistance application for a conference grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i)(B), the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 2 month Conference Grant to the Virginia Coal Council, 1901 Front Street, Richland, Virginia 24641, in the amount of $15,000. The DOE will fund approximately 40% of the allowable costs. The pending award is based on an unsolicited application for a Conference Grant for the "1989 Eleventh Annual Conference & Exhibition, Appalachian Coal: The Clean Fuel Choice For Today's Needs and Tomorrow's Growth." The application proposes to print and publish conference proceedings. This conference is aimed at updating the scientific, business and government communities of current activities concerning coal technology reserach, specifically clean coal technology. Whether or not the individual research topics covered have been directly sponsored by DOE, the results are of interest to the Department as well as to the scientific community.

FOR FURTHER INFORMATION CONTACT: Michael P. Nolan, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4149, Cooperative Agreement No. DE–FG21–89MC26387.

Dated: September 29, 1989.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89–23973 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–59–NG]

Amoco Energy Trading Corp.; Application To Export Natural Gas to Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 22, 1989, of an application filed by Amoco Energy Trading Corporation (AETC) requesting blanket authorization to export from the United States to Mexico up to 200,000 Mcf of natural gas per day or up to 73 Bcf of natural gas per year over a two-year period beginning on the date of first delivery. AETC intends to transport the gas through existing pipeline facilities and will advise the DOE of the date of first delivery. AETC intends to submit quarterly reports detailing each transaction.

The application is filed with the Office of Fossil Energy under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 e.d.t., November 12, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, U.S. Department of Energy, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: AETC, a Delaware corporation with its principal place of business in Chicago, Illinois, is a wholly-owned subsidiary of Amoco Production Company, which is a wholly-owned subsidiary of Amoco Company, which is wholly-owned by Amoco Corporation. Amoco Corporation is an integrated company engaged in the exploration, production, refining, transportation, and marketing of oil, natural gas and other hydrocrabons. AETC intends to sell natural gas produced in the Southwest, including the states of New Mexico and Texas, pursuant to freely negotiated contracts at competitive prices. AETC cannot at this time identify the parties purchasing the natural gas that AETC proposes to export because no sales contracts have been executed.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket export application is granted,

the authorization may permit the export of the gas at any international border point where existing transmission facilities are located. In addition, the total amount of authorized volumes may be designated for the term rather than a daily or yearly limit, in order to provide the applicant with maximum flexibility of operations.

AETC indicates in its application that it may request confidential treatment of the quarterly reports that DOE requires importers to file if the application is granted. All parties should be aware that the DOE's disclosure policy and regulations in 10 CFR part 1004 implementing the Freedom of Information Act require information in the possession of the Department to be made available to the fullest extent possible. The DOE also emphasizes that public participation has been a cornerstone of the Department's import and export policy and program, and lack of access to transaction details would seriously impair the public's ability to comment on the public interest. While the DOE examines requests for confidentiality on a case-by-case basis, the burden of justifying confidential treatment is heavy and, to date, the DOE has denied all such requests made in connection with this program. In the case of blanket arrangements such as AETC proposes, some limited confidentiality is afforded by the quarterly reporting requirements since transaction information is not required to be filed until 30 days after the end of each calendar quarter.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 29, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed at the above address. It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of AETC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 3, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-23854 Filed 10-10-89; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 89-56-NG]

Exxon Corp.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Application for Blanket Authorization To Import Natural Gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 14, 1989, of an application filed by Exxon Corporation (Exxon) for blanket authorization to import up to 36.5 Bcf of Canadian natural gas per year, not to exceed 100,000 Mcf daily, over a two-year period beginning on the date of the first delivery. Exxon intends to use existing pipeline facilities for transportation of the volumes imported and proposes to submit reports to FE within 45 days after the end of each calendar quarter detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-50, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-055B, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1789.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Exxon is a New Jersey corporation with offices in Houston, Texas. Under the blanket authority sought, Exxon would import natural gas from Canada for its own account or as agent for U.S. purchasers. The specific terms of each import transaction would be negotiated on an individual basis in response to prevailing gas market conditions. In support of its application, Exxon asserts that its transactions would be premised upon the imported gas being competitive with other supply alternatives, and that, if not, there would be no imports. Exxon rquests that an import authorization be granted on an expedited basis.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing transmission facilities are located. In addition, a total amount of authorized volumes may be designated for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, he DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above no later than 4:30 p.m., e.d.t., November 13, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Exxon's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–23855 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER89–669–000, et al.]

Connecticut Light & Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings September 29, 1989.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light & Power Company

[Docket No. ER89–669–000]

Take notice that on September 22, 1989, Northeast Utilities Service Company (NUSCO) on behalf of the Connecticut Light & Power Company (CP&L) and Western Massachusetts Electric Company (WMECO) collectively referred to as the NU Companies) tendered for filing rate schedules with various materials pertaining to the following Agreements:

Sales Agreement with Respect to the Retirement Package (Agreement A) dated as of May 1, 1987, between NU Companies and Canal Electric Company;

Supplemental Sales Agreement with Respect to the Retirement Package (Agreement B), dated as of May 1, 1988, between the NU Companies and Commonwealth Electric Company (Comm Elec);

Supplemental Sales Agreement with Respect to the Retirement Package (Agreement C), dated as of November 1, 1988, between the NU Companies and Canal;

Sales Agreement with Respect to the Retirement Package (Agreement D), dated as of March 1, 1987, between the NU Companies and New England Power Company (NEP);

Sales Agreement with Respect to the Retirement Package (Agreement E),

dated May 1, 1987, between NU Companies and Green Mountain Power Corporation (GMP);
Sales Agreement with Respect to the Retirement Package (Agreement F), dated as of November 1, 1987, with Letter Amendment dated as of August 14, 1989, between the NU Companies and Boston edison Company (BE);
Sales Agreement with Respect to the Retirement Package (Agreement G), dated as of November 1, 1987, between the NU Companies and Central Maine Power Company (CMP);
Sales Agreement with Respect to Retirement Package (Agreement H), dated as November 1, 1987, between the NU Companies and Montaup Electric Company (Montaup).

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company, PacifiCorp, PC/UP&L Merging Corporation

[Docket No. EC88-2-004

Take notice that on September 8, 1989, PacifiCorp, in accordance with the Federal Energy Regulatory Commission's Opinion No. 318, 45 FERC ¶ 61,095 (1988), Opinion No. 318-A, 47 FERC ¶ 61,209 (1989), and Opinion 318-B, FERC ¶ 61,035 (1989), filed its Announcement of Remaining Existing Capacity Allocation.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Gas and Electric Company

[Docket No. ER89-668-000]

Take notice that Kansas Gas and Electric Company (KG&E) on September 22, 1989 tendered for filing a proposed Generating Municipal Electric Service Agreement (Agreement) superseding FERC Electric Service Tariff No. 128.

KG&E states that the filing assures continued service to the City of Chanute, Kansas (City).

This filing is necessary because KG&E desires to cancel its existing Electric Interconnection Contract but desires to continue to serve the City. Incorporated into this Agreement is a separately negotiated and Commission-authorized facilities use agreement which became effective on February 6, 1987. KG&E has requested an effective date on January 1, 1990.

Copies of the filing were served upon the City of Chanute, Kansas and the Utilities Division of the Kansas Corporation Commission.

Comment date: Octber 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Commonwealth Electric Company, Boston Edison Company, Montaup Electric Company

[Docket No. ER89-673-000]

Take notice that on September 26, 1989, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve-month period ending December 31, 1988. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1987.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utitlites.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Potomac Electric Power Company

[Docket No. ER89-674-000]

Take notice that on September 26, 1989, Potomac Electric Power Company (PEPCO) and Virginia Electric & Power Company (Virginia Power) tendered for filing rate schedule supplements to their 1983 interconnection agreement and their 1965 facilities agreement (PEPCO FERC Rate schedules No. 35 and 20 respectively), to be effective December 1, 1989, to permit small boundary customer services at distribution voltages in order to provide service connections from existing facilities of either party which may be more accessible to the other party's small customer, provided that such services to either party are not in the aggregate greater than 1 megawatt. The rate for such service will be the same for existing wholesale service by PEPCO to Virginia Power for a larger boundary coustomer nearby.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Power and Light Company

[Docket No. ER89-671-000]

Take notice that on September 22, 1989, Iowa Power and Light Company (Iowa Power) tendered for filing two service schedules, identified as Service Schedule A and Service Schedule B, to supersede the schedules attached to the Facilities Agreement between Iowa Power and N.W. Electric Power Cooperative, Inc. (N.W.) dated June 24, 1970). The new service schedules are dated January 18, 1989.

Iowa Power states that the new service schedules represent negotiated agreements to reflect the installation of a larger transformer at the Hamburg Substation; that the new service schedules supersede the existing Service Schedules A and B; and that N.W. and the Iowa State Utilities Board have been mailed copies of the Agreement.

Iowa Power requests and effective date of January 18, 1989, and therefore requests a waiver of the Commission's notice requirements.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Pfizer Inc.

[Docket No. QF89-350-000]

On September 22, 1989, Pfizer Inc. (Applicant), of Eastern Point Road, Groton, Connecticut 06340, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's chemical manufacturing plant at Eastern Point Road, in Groton, Connecticut. The facility will consist of oil fired boilers and nine back pressure and/or extraction steam turbine generators. The thermal output of the facility, in the form of exhaust heat and/or extraction steam, will be used in chemical manufacturing processes. The primary energy source of the facility will be fuel oil. The maximum net electric power production capacity of the facility will be 28.25 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ES89-38-000]

Take notice that on September 27, 1989, UtiliCorp United Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission

("Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue not more than 500,000 shares of comon stock, stock, par value $1.00 per share, pursuant to the UtiliCorp United Inc. Savings Plan and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: October 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Oklahoma

[Docket No. EL89-49-000]

Take notice that on August 16, 1989, as completed on September 21, 1989, Public Service Company of Oklahoma (PSO) filed a request for a declaratory order approveing PSO's proposed accounting for the compensation that PSO will pay to purchase power for Mid-Continent Power Company, Inc., PSO also seeks waiver, if necessary, of the Commission's fuel adjustment clause (FAC) regulations to permit PSO to recover such payments through its FAC.

Comment date: October 13, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Department of the Navy v. Pacific Gas and Electric Company

[Docket No. EL89-54-000]

Take notice that on September 27, 1989, the Department of the Navy (Navy) filed a complaint against Pacific Gas and Electric Company (PG&E). The Navy states that is owns and operates Hunters Point Annex (Shipyard). The Navy further states that it purchases its total electric requirements for the Shipyard from PG&E, and that most of the electric energy purchased for the Shipyard from PG&E is resold by the Navy to government and private tenants at the Shipyard.

In its complaint the Navy alleges that PG&E refuses to render service to the Navy at the Shipyard other than on a retail basis. The Navy further alleges that PG&E's refusal to render service to the Navy at a wholesale rate and it sale of electricity to the Navy in interstate commerce for resale without having a rate on file therefore with the Commission are in violation of section 205 of the Federal Power Act.

The Navy requests that the Commission make a determination as to the wholesale character of the sales of electric energy from PG&E to the Shipyard and to institute proceedings to determine a just and reasonable rate to be charged for such service.

Comment date: October 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23874 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-61-000]

Bayou Interstate Pipeline System; Proposed Change in Rates

October 4, 1989

Take notice that on September 29, 1989, Bayou Interstate Pipeline System (Bayou) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, (Tariff) Thirteenth Revised Sheet No. 4 to be effective November 1, 1989.

The proposed tariff sheet is filed pursuant to the Purchased Gas Cost Adjustment provisions contained in section 15 of Bayou's tariff. A copy of this filing is being mailed to Bayou's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission (Commission), 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211. All such motions or protests must be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23875 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

Energy Information Administration

Forms CE-63A/B, "Solar Thermal Collector Manufacturers Survey"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed extension of the Forms CE-63A/B, "Solar Thermal Collector Manufacturers Survey" and "Photovoltaic Module Manufacturers Survey" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed extension to Form CE-63A/B, "Solar Thermal Collector Manufacturers Survey" and "Photovoltaic Module Manufacturers Survey."

DATE: Written comments must be submitted within 30 days of the publication of this notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESS: Send comments to Theresa Payne, EI-531, Energy Information Administration, U.S. Department of Energy, Mail Stop 2G-090, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-1018.

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORM AND INSTRUCTIONS: Requests for additional information or copies of the forms should be directed to Theresa Payne at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

In order to fulfill its responsibilities under the Department of Energy Organization Act (Pub. L. 95-91), the Energy Information Administration is

obliged to carry out a central comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resources reserves, production, demand, and technology, and related economic and statistical information. The program will also include data and information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

Form CE–63A collects data on company shipments, manufacturing, importing, and exporting of solar thermal collectors. Manufacturers of solar thermal collectors are requested to report their annual shipments in terms of square feet of collectors shipped whether manufactured or imported. Respondents are also requested to indicate prototype development, note other related activities in which they are engaged, and provide information concerning market sector and end-use breakdowns, as well as information on company size. All appropriate data is disaggregated by type of solar collector.

Manufacturers of photovoltaic modules are asked to provide similar data on Form CE–63B indicating production in terms of electrical capacity expressed in peak kilowatts.

II. Current Actions

The EIA is proposing a three-year extension and possible modifications to Forms CE–63A/B. The EIA is planning to meet with solar industry personnel, DOE personnel, and other interested parties to discuss changes to Forms CE–63A/B. Proposed changes include combining specific questions where confidentiality and public disclosure problems exist. A detailed analysis of Forms CE–63A/B will be done to determine which questions are possible candidates for modification.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed forms and the proposed extension. The following general guidelines are provided to assist in the preparation of responses. When commenting, please indicate to which form your comment applies.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden for this collection is estimated to average less than 2 hours per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form?

E. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form be improved?

G. Do you know of any other Federal, State or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detailed indicated on the form?

B. For what purpose would you use the data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the "Solar Thermal Collector Manufacturers Survey" and the "Photovoltaic Module Manufacturers Survey."

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval of the form; they also will become a matter of public record.

Authority: Sec. 5(a), 5(b), 13(b) and 52 of Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b) and 790a.

Issued in Washington, DC October 5, 1989.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89–23976 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–57–NG]

Enron Gas Marketing, Inc., Application to Import Natural Gas From Canada and to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada and to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 16, 1989, of an application filed by Enron Gas Marketing, Inc. (EGM), for blanket authorization to import up to 300 Bcf a year of Canadian natural gas and to export up to 300 Bcf a year of domestic natural gas to Mexico over a term of ten years. If a ten-year term is not approved, EGM requests a term of not less than two years beginning the later of January 1, 1990, or the date of first delivery. EGM now holds blanket authority to import up to 250 Bcf a year of Canadian natural gas through December 31, 1989.

EGM intends to utilize existing pipeline facilities to transport the proposed volumes to be imported and exported, and indicates that it would submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address below no later than 4:30 p.m. e.d.t., November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, Room 3F–056, FE–50, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Larine A. Moore, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room, 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: EGM, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of Enron Corp. EGM's existing two-year blanket authorization was granted in DOE/ERA Opinion and Order No. 153, issued November 6, 1986. First delivery of imported gas began on January 1, 1988.

EGM, a marketer of natural gas, requests authority to continue to import natural gas for short-term sales to

interstate pipelines, intrastate pipelines, local distribution companies, cogeneration facilities and industrial end-users. The applicant also requests authority to export domestic natural gas for sale to industrial users in the area of Monterrey, Mexico. According to EGM, the specific terms of each import/export would be negotiated on an individual basis, including price and volumes, to reflect the current market conditions.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arrangement will be competitive and in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that, in accordance with its present policy and past practice, if FE approves the blanket authorization, it may limit the term to two years. This limitation, if imposed, presumes imports and exports would take place under contracts with terms of two years or less. In addition, all parties should take note that if this blanket import/export application is granted, the authorization may permit the import or export of the gas at any point of entry or exit on the international boundary where existing pipeline facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs. It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial questions of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, Room 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–23974 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–71–NG]

Intalco Aluminum Corp.; Application to Amend Blanket Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of Application to amend conditional order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on August 31, 1989, of an application filed by Intalco Aluminum Corporation (Intalco) for an amendment to the conditional authorization, DOE/FE Opinion and Order No. 302 (Order 302) (February 28, 1989, 1 FE Para. 70,215), granting blanket authorization to import up to 2 Bcf of Canadian natural gas per year for two years, for use as fuel in its aluminum smelting plant located in Ferndale, Washington. The final approval of this import was conditioned on completion of the environmental review of a proposed new pipeline, known as the Ferndale Pipeline System. Intalco now proposes to import Canadian natural gas using existing facilities and is seeking to have its conditional authorization amended accordingly. Intalco states that it will file quarterly reports detailing each import transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene,

notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 13, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1657.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Under Intalco's original proposal, the gas, to be purchased from various Canadian suppliers, would be transported from a point of importation at the international border near Sumas, Washington, through new pipeline facilities to be jointly owned and operated by Intalco and Atlantic Richfield Company (ARCO). The amendment requested would grant Intalco final blanket authorization to import up to 2 Bcf of gas per year over a two-year period beginning on the date of first delivery using existing facilities rather than the date the proposed new pipeline is built and operable.

Intalco currently receives gas which is acquired on the spot market in Canada and imported on its behalf by Cascade Natural Gas Corporation (Cascade) and transported through the pipeline facilities of Northwest Pipeline Corporation (Northwest Pipeline) and Cascade. The requested amendment would enable Intalco to directly import this natural gas from Canadian sources using the existing facilities of Northwest Pipeline and Cascade until such time as the Ferndale Pipeline System is completed.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Based on the application, the only change represented by this amendment request is the proposed use of existing facilities. Order 302 made a preliminary finding that the underlying arrangement, like other, previously authorized blanket imports, is inherently competitive. Order 302 also made preliminary findings that Intalco has demonstrated a need for the gas and that the security of supply for each purchase is assured by its short term and the number of term and the number of potential suppliers. Those preliminary findings are not expected to be changed by the proposed use of existing facilities. Parties, especially those that may oppose this requested amendment, should address the impact of the use of existing facilities on the consistency of this proposal with DOE policy guidelines.

NEPA Compliance

The DOE has determined that in cases not involving major new construction its compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE with regard to existing facilities. This exclusion is not relevant to the proposed Ferndale Pipeline System.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Persons who have already been granted permission to intervene in this docket need not file new motions to intervene, but may submit additional comments or request additional procedures in this case concerning Intalco's request to amend Order 302. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Section 590.316.

A copy of Intalco's amendment application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 4, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 89–23975 Filed 10–10–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TQ90-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 4, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on September 29, 1989, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective November 1, 1989:

One hundred and thirty-ninth Revised Sheet No. 16
Twenty-seventh Revised Sheet No. 16A2
Forty-first Revised Sheet No. 64A

Columbia states that the sales rates set forth on One hundred and thirty-ninth Revised Sheet No. 16 reflect an overall increase of 4.18¢ per Dth in the Commodity rate, and decreases of $.347 per Dth in the Demand-1 rate and 1.05¢ per Dth in the Demand-2 rate. In addition, the transportation rates set forth on Twenty-seventh Revised Sheet No. 16A2 reflect an increase in the Fuel Charge component of .11¢ per Dth.

The purpose of the subject tariff sheets is to reflect the following:

(1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;

(2) An Unrecovered Purchased Gas Cost Surcharge to be effective during the period November 1, 1989 through April 30, 1990;

(3) A continuation of certain other surcharges which were accepted by the Commission on April 27, 1989 to be effective during the 12-month period of May 1, 1989 through April 30, 1990;

(4) A Transportation Fuel Charge Adjustment; and

(5) A proposal for interim PGA treatment of certain reservation charges incurred by Columbia in connection with its conversion from firm sales entitlements to firm transportation services with Tennessee Gas Pipeline Company and Texas Gas Transmission Corporation as well as a proposal for the inclusion of certain storage costs associated with East Ohio Gas Company.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23876 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-1-47-000]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

October 4, 1989.

Take notice that on September 29, 1989, MIGC, Inc. (MIGC) tendered for filing Fifty-fifth Revised Sheet No. 32 to its FERC Gas Tariff Original Volume No. 1. MIGC states that the purpose of this proposed tariff change is to submit its scheduled quarterly purchased gas cost adjustment (PGA) filing pursuant to the Commission's revised PGA regulations and the revised PGA provisions of MIGC's tariff, as provided in Docket No. RP88-143-000. The revised tariff sheet is proposed to become effective November 1, 1989.

Fifty-Fifth Revised Sheet No. 32 included in the filing reflects a $.0000 per MMBtu quarterly PGA adjustment. MIGC states that the proposed quarterly PGA adjustment reflects no change in the current adjustment to be effective November 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23877 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-15-003]

MID Louisiana Gas Co.; Filing

September 29, 1989.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on September 27, 1989 tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective October 1, 1989:

Second Substitute Seventieth Revised Sheet No. 3a

Superseding

First Substitute Seventieth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Second Substitute Seventieth Revised Sheet No. 3a is to correct a typographical error contained on First Substitute Seventieth Revised Sheet No. 3a.

Mid Louisiana requests that Second Substitute Seventieth Revised Tariff Sheet No. 3a be accepted and allowed to become effective October 1, 1989.

This filing is being made in accordance with Section 22 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426 in accordance with § 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). All such motions or protests should be filed on or before October 6, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23878 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA89-10-000]

Morgas Co.; Petition for Adjustment

September 29, 1989.

Take notice that on September 1, 1989, Morgas Company (Morgas) filed pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment from § 284.123(b)(ii) of the Commission's regulations to permit Morgas to use its current, Texas-intrastate rate for NGPA section 311(a) transportation services. Morgas, an intrastate pipeline having no city-gate rate, proposes transportation services for interstate pipelines and local distribution companies. Morgas states that granting its petition is consistent with Commission precedents and will enable it to avoid an inequity.

The procedures applicable to this proceeding are in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the provisions of Subpart K. Motions to intervene must be filed within 15 days after publication of this notice in the Federal Register. The petition is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23879 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-1-73-000]

Ozark Gas Transmission System; Proposed Changes in FERC Gas Tariff

October 4, 1989.

Take notice that Ozark Gas Transmission System ("Ozark") on September 27, 1989, tendered for filing the following revised tariff sheet in its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet No. 5

The proposed effective date is October 1, 1989.

Ozark states that it is amending its transporatation rate schedule to reflect its Commission-authorized Annual Charge Adjustment ("ACA") unit charge of $.0017. Ozark states that this filing is submitted in compliance with § 154.38(d)(6)(iii) of the Commission's Regulations.

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23880 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-136-013]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 28, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 25, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Second Revised Sheet No. 317
Second Revised Sheet No. 318
Second Revised Sheet No. 319
Second Revised Sheet Nos. 320-325
Fourth Revised Sheet No. 502

Texas Eastern states that the purpose of this filing is to incorporate as part of Texas Eastern's firm transportation Rate Schedule FT-1 a new Section 16 which sets forth the terms and conditions of Texas Eastern's transportation assignment program, as approved by the Commission's August 22, 1989 order (August 22 order) in *Texas Eastern Tramsmission Corporation*, Docket No. CP88-136-007.

Texas Eastern states that on June 26, 1989, it filed in Docket No. CP88-136-007 an application seeking authorization to implement a transportation assignment program for its shippers under Rate Schedule FT-1. As part of such Application, Texas Eastern filed as Exhibit P a pro forma copy of Section 16. By its order issued August 22, 1989 in Docket No. CP88-136-007, the Commission authorized a transportation assignment program, subject to certain conditions and modifications, for a limited term of ten years.

Texas Eastern states that in compliance with the August 22 order, it submits the above referenced tariff sheets which reflect the Commission's changes to the pro forma tariff sheets filed as part of the application. In particular these changes are as follows:

(1) Section 16.1(a) of Rate Schedule FT-1 on Sheet Nos. 317 and 318 was revised to permit multiple assignments of transportation service rights under Rate Schedule FT-1;

(2) Section 16.2(b) of Rate Schedule FT-1 on Sheet No. 318 deletes language that restricted the assignment of transportation service rights under Rate Schedule FT-1; and

(3) Paragraph (3) of the Transportation Assignment Notice on Sheet No. 502 incorporates language that reflects the multiple assignment of transportation service rights.

Texas Eastern states that the tariff sheets filed herewith comply with the modifications required by the August 22, 1989 order.

The tariff sheets listed above are proposed to be effective as of November 1, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before October 11, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23881 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-99-001]

Transwestern Pipeline Co.; Sale of Natural Gas

September 29, 1989.

Take notice that on September 20, as further supplemented on September 29, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transwestern's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP88-99-000 issued

May 11, 1988 (43 FERC ¶ 61,240). Transwestern proposes to initiate the sale on October 1, 1989.

(1) *Name of Buyer:* Enron Gas Marketing, Inc. (EGM).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Transwestern and Buyer:* Transwestern is a wholly-owned subsidiary of Houston Pipeline Company. Both Houston Pipeline Company and EGM are wholly-owned subsidiaries of Enron Corp.

(4) *Nature of involvement of affiliate:* Brokerage.

(5) *Term of Sale:* October 1, 1989, and month to month thereafter.

(6) *Estimated Total and Maximum Daily Quantities:*

Maximum Daily Quantity: 200,000 MMBtu.

Estimated Total: 5 Bcf per month.

(7) *Rates: Maximum:* $2.4474/dth.

Minimum: Deliveries West of Roswell, NM $1.6990/dth; Deliveries East of Roswell, NM $1.6417/dth.

To be Charged During Billing Period: $1.80/dth.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transwestern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23882 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-99-002]

Transwestern Pipeline Co.; Sale of Natural Gas

September 29, 1989.

Take notice that on September 20, 1989, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transwestern's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP88-99-000 issued May 11, 1988 (43 FERC ¶ 61,240). Transwestern proposes to initiate the sale on October 1, 1989.

(1) *Name of Buyer:* Enron Gas Marketing, Inc. (EGM).

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation Between Transwestern and Buyer:* Transwestern is a wholly-owned subsidiary of Houston Pipeline Company. Both Houston Pipeline Company and EGM are wholly-owned subsidiaries of Enron Corp.

(4) *Nature of Involvement of Affiliate:* Brokerage.

(5) *Term of Sale:* October 1, 1989, and month to month thereafter.

(6) *Estimated Total and Maximum Daily Quantities:*

Maximum Daily Quantity: 200,000 MMBtu.

Estimated Total: 5 Bcf per month.

(7) *Rates: Maximum:* $2.4474/dth.

Minimum: Deliveries WEST of Roswell, NM $1.6990/dth; Deliveries East of Roswell, NM $1.6417/dth.

To Be Charged During Billing Period: Spot price as indexed in *Inside FERC* plus 3 cents/dth, but not above or below the maximum or minimum, respectively.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transwestern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23883 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2191-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

October 4, 1989.

Take notice that on September 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-2191-000 a request pursuant to §§ 156.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Victoria Gas Corporation (Victoria), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 103,000 MMBtu of natural gas on a peak day, 103,000 MMBtu on an average day and 37,595,000 MMBtu on an annual basis for Victoria. United states that it would perform the transportation service for Victoria under United's Rate Schedule ITS. United indicates that it would transport the gas from numerous receipt points in Louisiana, Texas, Mississippi to various delivery points specified in the application.

It is explained that the service commenced July 16, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4461. United indicates that no new facilities would be necessary to provide the subject service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-23884 Filed 10-10-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2193-000]

United Gas Pipe Line Co.; Request Under Blanket Authorization

October 4, 1989.

Take notice that on September 28, 1989, United Gas Pipeline Company (United), P.O. Box 1478, Houston, Texas 77251, filed in Docket No. CP89-2193-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport natural gas on an interruptible basis for Texican

Natural Gas Company (Texican). United explains that service commenced August 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–4585–000. United explains that the peak day quantity would be 318,270 MMBtu, the average daily quantity would be 318,270 MMBtu, and that the annual quantity would be 116,168,550 MMBtu. United explains that it would receive natural gas for Texican's account at a receipt point in Livingston Parish, Louisiana and redeliver the gas at points in St. Mary Parish and St. Martin Parish, Louisiana.

Any person or the Commission's staff may, within 45 days after issuance of the instaant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89–23885 Filed 10–10–89; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3670–3]

Chesapeake Bay Program; 1987 Chesapeake Bay Agreement; Implementation Plan Preparation

The Living Resource Subcommittee of the Chesapeake Bay Program announces the beginning of Implementation Plan preparation for the following 1987 Chesapeake Bay Agreement commitments:

1. Baywide Fishery Management Plans for Alosid, Blue Crab and Oysters
2. Wetlands Policy
3. Submerged Aquatic Vegetation Policy (SAV) for the Chesapeake Bay and Tidal Tributaries

Individuals interested in the preparation of any of these plans may obtain additional information by contacting: Pete Jensen (Fishery Management Plans) 301/974–3558, Larry Lower (Wetlands Policy) 301/962–4905, Linda Hurley (SAV Policy) 301/224–2732.

Patricia Bonner,

Acting Director, Chesapeake Bay Liaison Office.

[FR Doc. 89–23965 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3669–9]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor Radian Corporation, and their subcontractors, Versar, Inc.; Alliance Technologies, Inc.; Metcalf & Eddy, Inc.; John Zink Company; ICF, Inc.; ECOVA Corporation; Resource Applications, Inc.; and the University of Dayton's Research Institute information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATE: The transfer of data submitted to EPA will occur no sooner than October 18, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November, 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract No. 68–W9–0072, Radian Corporation and their subcontractors will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Radian Corporation and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

Radian Corporation and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: July 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator.

[FR Doc. 89–23966 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3670–1]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor Versar, Inc., and their

subcontractors, Radian Corporation; Eastern Research Group, Inc.; C–E Environmental, Inc.; ECOVA Corporation; and Kerr & Associates, Inc.; information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATE: The transfer of data submitted to EPA will occur no sooner than October 18, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract No. 68–W9–0068, Versar and their subcontractors will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Versar and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials, submitted, the contractors will return all such materials to EPA.

Versar and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: July 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator.

[FR Doc. 89–23967 Filed 10–10–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3670–2]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor Radian Corporation, and their subcontractors, Alliance Technologies, Inc.; Four Nines, Inc.; Resource Applications, Inc.; Sobotka & Company, Inc.; Systems Applications, Inc. and Louisiana State University's Mechanical Engineering Department information which has been, or will be, submitted to EPA under section 3007 of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in conducting analyses of the data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information may have a claim of business confidentiality.

DATE: The transfer of data submitted to EPA will occur no sooner than October 18, 1989.

ADDRESSES: Comments should be sent to Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data.".

FOR FURTHER INFORMATION CONTACT: Dina Villari, Document Control Officer, Office of Solid Waste (OS–312), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 382–4670.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

In November, 1984, Congress enacted amendments to the Resource Conservation and Recovery Act (RCRA) requiring the Agency to establish standards for treatment of hazardous wastes prior to land disposal. A major portion of this program involves identifying generators and treaters of these wastes and collecting and analyzing data from full-scale technologies.

Under EPA Contract No. 68–W9–0069, Radian Corporation and their subcontractors will assist the Waste Treatment Branch of the Office of Solid Waste in conducting analyses of data submitted to EPA under section 3007 of RCRA for the development of treatment standards for hazardous wastes subject to the land disposal restriction rules. Some of the information being transferred may have been, or will be, claimed as confidential business information.

In accordance with 40 CFR 2.305(h), EPA has determined that Radian Corporation and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, the contractors will return all such materials to EPA.

Radian Corporation and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities and approve them prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security

procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: July 22, 1989.

Robert H. Wayland,

Acting Assistant Administrator.

[FR Doc. 89-23968 Filed 10-10-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3670-4]

Stratospheric Ozone Protection Advisory Committee

ACTION: Announcement of Advisory Committee Meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has established an Advisory Committee under the Federal Advisory Committee Act (FACA), and has solicited nominations of persons to serve as the representatives on that committee, (54 FR 31879, August 2, 1989). The purpose of the committee, known as the Strastospheric Ozone Protection Advisory Committee, is to provide advice and assistance on technical and policy issues that relate to the domestic and international aspects of the Montreal Protocol on Substances That Deplete the Ozone Layer (Montreal Protocol). The Advisory Committee will also assist the Agency in serving the public interest during the transition to substitutes for ozone depleting chemicals.

Nominations have been received and committee members have been selected. The membership of the committee represents a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the committee. They have been chosen to be representative of business and industry; educational and research institutions; nongovernmental organizations, public interest groups and environmental organizations; and international organizations.

The purpose of this notice is to announce that the first meeting of this committee will be held October 26, 1989. The meeting will examine issues related to upcoming activities related to strengthening the Montreal Protocol. The meeting is open to the general public; seating will be limited and therefore, will be available on a first come, first served basis.

TIME AND LOCATION: The meeting will take place from 8:30 a.m. to 1:00 p.m., on Thursday, October 26, 1989 at Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karla Perri, at (202) 382-7750 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Dated: October 5, 1989.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 89-24071 Filed 10-10-89; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100069; FRL-3658-4]

Systems Integration Group, Inc. and Automated Sciences Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Systems Integration Group, Inc. (SIG) and its subcontractor, Automated Sciences Group, Inc. (ASG) will be awarded a contract to perform work for EPA's Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SIG and ASG in accordance with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), respectively. This transfer will enable SIG and ASG to fulfill the obligations of the contract and serves to notify affected persons.

DATE: SIG and ASG will be given access to this information no sooner than October 16, 1989.

FOR FURTHER INFORMATION CONTACT: By mail:

Catherine S. Grimes, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 212, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557-4460.

SUPPLEMENTARY INFORMATION: Under the contract (currently RFP No. D901450LI) SIG and ASG will receive and screen information submitted to EPA in support of the registration of pesticide products. The information gained from this screening will be entered into the Pesticide Document Management System (PDMS) and the corresponding microfilm collection. From this system, retrievals are run and bibliographies produced to support the registration, tolerance, and special review programs, and other data-dependent activities of the pesticide registration program. SIG and ASG will provide support in maintaining the PDMS index, cataloguing and indexing of newly accepted documents, maintaining the PDMS microfilm file and providing retrieval and reproduction services on request.

The Office of Pesticide Programs has determined that access by SIG and ASG to information on all pesticide chemicals is necessary for the performance of the contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2) and 40 CFR 2.308(i)(2), the contract with SIG and ASG prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, SIG and ASG are required to submit for EPA approval a security plan in accordance with the FIFRA Information Security Manual under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and its subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SIG and ASG by EPA for use in connection with this contract will be returned to EPA when SIG and ASG have completed their work.

Dated: October 2, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-23969 Filed 10-10-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-844-DR]

North Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: September 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Alexander, Brunswick, Burke, Cabarrus, Caldwell, Catawba, Cleveland, Iredell, and Wilkes for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23950 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-844-DR]

North Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: October 3, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Alleghany, Ashe, Avery, Surry, and Watauga for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23951 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-844-DR]

North Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-844-DR), dated September 25, 1989, and related determinations.

DATED: October 4, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of North Carolina, dated September 25, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 25, 1989:

The counties of Anson, Montgomery, Richmond, Rowan, and Stanly for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23952 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

(FEMA-842-DR)

Puerto Rico; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-842-DR), dated September 21, 1989, and related determinations.

DATED: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the Commonwealth of Puerto Rico, dated September 21, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 21, 1989:

The municipios of Adjuntas, Aibonita, Aguas Buenas, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Caguas, Camuy, Catano, Cayey, Ciales, Cidra, Coamo, Comerio, Corozal, Dorado, Florida, Guayama, Guaynabo, Gurabo, Hatillo, Jayuya, Lares, Manati, Morovis, Naranjito, Orocovis, Patillas, Ponce, Salinas, San Lorenzo, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, and Villalba for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-23953 Filed 10-10-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-843-DR]

South Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA-843-DR), dated September 22, 1989, and related determinations.

DATED: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Chester from Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 89–23954 Filed 10–10–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–843–DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–843–DR), dated September 22, 1989, and related determinations.

DATED: September 29, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Chesterfield, Colleton Darlington, Marion, and Richland for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 89–23955 Filed 10–10–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–843–DR]

South Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–843–DR), dated September 22, 1989, and related determinations.

DATED: September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Dillon and Marlboro for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–23956 Filed 10–10–89; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–843–DR]

South Carolina; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina (FEMA–843–DR), dated September 22, 1989, and related determinations.

DATED: September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of South Carolina, dated September 22, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1989:

The counties of Fairfield, Kershaw, Lancaster, and Williamsburg for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89–23957 Filed 10–10–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Cardinal Bancshares, Inc.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under seciton 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of

Governors not later than November 1, 1989.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cardinal Bancshares, Inc.*, Lexington, Kentucky; to engage *de novo* in providing management consulting advice to non-affiliated bank and non-bank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the Commonwealth of Kentucky.

Board of Governors of the Federal Reserve System, October 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23905 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

ComSouth Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to became a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 30, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *ComSouth Bankshares, Inc.*, Columbia, South Carolina; to acquire 100 percent of the voting shares of Bank of Charleston, National Association (in organization), Charleston, South Carolina, a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta Georgia 30303:

1. *Charter Banking Corp.*, formerly First Gulf Banking Corp., St. Petersburg, Florida; to acquire 65.02 percent of the voting shares of Southern Exchange Bank, Tampa, Florida.

2. *Drummond Banking Company*, Chiefland, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Drummond Community Bank, Chiefland, Florida, a *de novo* bank.

3. *Village Bankshares, Inc.*, Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The Village Bank of Florida, formerly the Village Bank of Hillsborough County, Tampa, Florida.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Oak Brook Bancshares, Inc.*, Oak Brook, Illinois; to acquire First Oak Brook Bank, Chicago, Illinois, a *de novo* bank.

2 *Firstar Corporation* Milwaukee, Wisconsin, and Firstar Corporation of Illinois, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Park Forest Holdings, Inc., Omaha, Nebraska; Park Forest Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire Bank of Park Forest, Park Forest, Illinois.

D. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Republic Bancshares, Inc.*, Neosho, Missouri, and Security State Bank of Republic, Republic, Missouri; to merge with Marionville Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire First State Bank of Marionville, Marionville, Missouri.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *West Central Banque Shares, Inc.*, Hancock, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Hancock State Bank, Hancock, Minnesota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bancshares of McLouth*, McLouth, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of McLouth, McLouth, Kansas.

2. *Southern Bancorp, Inc.*, Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Southern National Bank, Tulsa, Oklahoma.

G. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *El Capitan Bancshares, Inc.*, Sonora, California; to become a bank holding company by acquiring 100 percent of the voting shares of El Capitan National Bank, Sonora, California.

Board of Governors of the Federal Reserve System, October 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23906 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications

must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 30, 1989.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation,* Rocky Mount, North Carolina; to acquire Watauga Savings and Loan Association, Inc., Boone, North Carolina, and thereby engage in owning and operating a state-chartered savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Randall-Story Bancshares, Inc.,* Story City, Iowa; to acquire Kinseth Insurance Agency, Randall, Iowa, and thereby engage in general insurance in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 4, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-23907 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket R-0676]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposal to establish a uniform deadline for all third-party Fedwire funds transfers. In addition, Board requests comment on whether restricting the last 15 minutes of the final half-hour settlement period to funds transfers sent to receiving institutions for their own accounts (and not for the accounts of respondent institutions) would be desirable to facilitate reserve account management. The Board also requests comment on (1) whether the closing of the book-entry securities wire in the Twelfth District should be made consistent with the closing time observed in the other districts; and (2) whether the Federal Reserve should establish uniform times at which Reserve Banks begin processing funds and book-entry securities transfers. The Board believes that these changes would promote competitive equity among depository institutions and support efficient financial markets.

DATE: Comments must be submitted on or before December 8, 1989.

ADDRESS: Comments, which should refer to Docket No. R-0676, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public comments file, and may be inspected in Room B-1122 between 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information regarding Fedwire funds transfer operating hours, contact Bruce J. Summers, Associate Director (202/452-2231), Louise L. Roseman, Assistant Director (202/452-3874), or Tina G. Slater, Senior Financial Services Analyst (202/452-2539), Division of Federal Reserve Bank Operations. For information regarding Fedwire book-entry securities transfer operating hours, contact Bruce J. Summers, Associate Director (202/452-2231), Gerald D. Manypenny, Manager (202/452-3954), or Lisa Hoskins, Senior Financial Services Analyst (202/452-3437), Division of Federal Reserve Bank Operations. For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Uniform Third-Party Transfer Deadline

The current Fedwire operating schedule provides some level of uniformity to the closing times of the funds transfer service across Federal Reserve districts. Specifically, the schedule provides for an interdistrict third-party transfer deadline of 5:00 p.m.[1]; and an intradistrict and interdistrict bank-to-bank transfer [2] deadline of 6:30 p.m.

This schedule gives Federal Reserve Banks the flexibility to permit depository institutions to send intradistrict third-party transfers as late as 6:00 p.m., which results in disparities between the intradistrict and interdistrict third-party transfer deadlines in some districts. Five districts have intradistrict third-party transfer deadlines of either 5:30 p.m. or 6:00 p.m., thereby permitting institutions within their districts to exchange third-party transfers after the uniform 5:00 p.m. interdistrict third-party transfer closing. The table below shows the current closing times for the Fedwire funds transfer service.

CURRENT FEDWIRE FUNDS TRANSFER CLOSING TIMES

[Eastern Time]

District	Third-party transfers		Settlement transfers
	Interdistrict	Intradistrict	
Boston	5:00 p.m	5:30 p.m.	6:30 p.m.
New York	U N	6:00	U N
Philadelphia	I F	6:00	I F
Cleveland	O F	6:00	O R
Richmond	M	5:00	M
Atlanta	C L	5:00	C L
Chicago	O S	5:00	O S
St. Louis	I N	5:00	I N
Minneapolis	G	5:00	G
Kansas City	T I	5:00	T I
Dallas	M E	5:00	M E
San Francisco		6:00	

The Board proposes to establish a uniform 6:00 p.m. deadline for the processing of all third-party Fedwire funds transfers.[3] A number of depository institutions have indicated that later intradistrict third-party transfer deadlines in some parts of the nation have led to artificial restrictions on the flow of funds that put them at a competitive disadvantage. For example, Second District institutions continue to originate and receive third-party transfers among themselves totaling approximately $60 billion after the close of interdistrict third-party transfer traffic, but institutions in other districts are precluded from exchanging third-party transfers with New York institutions. Since New York is the nation's most active money center, some institutions in other districts perceive their inability to participate in the New York market on the same basis as Second District institutions as a significant competitive disadvantage. This proposed change should reduce competitive inequity among depository institutions by eliminating the

[1] All times referenced in this notice are Eastern Time, unless otherwise specified

[2] Bank-to-bank transfers are transfers that do not involve a non-depository institution third party either as sender or beneficiary.

[3] The objective of this proposal is to achieve consistency across Federal Reserve districts with respect to the Fedwire funds transfer third-party transfer deadline. Board and Reserve Bank staff are conducting a longer-term study to assess whether further modifications to Fedwire operating hours are required based on the continuing evolution of the payments system and financial markets. The proposals discussed in this notice do not anticipate the results of this study.

distinction between interdistrict and intradistrict third-party transfers.

West Coast depository institutions view the current third-party interdistrict deadline as especially restrictive, because it occurs relatively early in their business day. A uniform 6:00 p.m. third-party transfer deadline would provide West Coast institutions, which today must compete processing of interdistrict third-party transfers by 2:00 p.m. Pacific Time, with a deadline that is more consistent with the business day in the Pacific time zone.

Further, expanding the interdistrict third-party transfer processing hours should result in a reduction in the number of extensions to the third-party deadline, since more time would be available to handle peak volumes and to recover from midday outages. Finally, standardizing the Fedwire third-party transfer deadline nationwide would facilitate the operations of banking organizations that have offices across Federal Reserve district boundaries.

While there are clear benefits to this proposal, a later third-party transfer deadline could adversely affect reserve account management and result in increased extensions of the final Fedwire close. Today, institutions in seven districts have one and one-half hours between the close of both the interdistrict and intradistrict third-party wire and the final 6:30 p.m. Fedwire close in which to calculate and adjust reserve positions. By extending the deadline for interdistrict third-party transfers, the settlement period [4] for depository institutions in these seven districts would be reduced to one-half hour. An unanticipated last minute receipt of a third-party transfer could complicate reserve account management by contributing to a reserve excess. The need to adjust to such last minute changes in position could result in more frequent requests for extensions of the final Fedwire closing time. Moreover, given the narrower settlement window, any extension of the third-party deadline would always result in an extension of the final Fedwire closing time, in order to provide a 30 minute bank-to-bank settlemnt period. Extensions require additional operational support and management attention and are costly to both Reserve Banks and depository institutions.

In addition, a later interdistrict third-party transfer deadline could result in revised patterns of funds transfer volume that would result in some institutions receiving transfers later in the day. In five Federal Reserve districts, depository institutions can send funds transfers to in-district receiving institutions after the close of the interdistrict third-party wire. Consequently, a number of institutions in these districts, including the large New York banks, currently manage outgoing third-party transfers in the late afternoon so that their interdistrict transfers are sent prior to the 5:00 p.m. deadline, with the remaining transfers sent prior to the district's later intradistrict deadline. If the Federal Reserve adopts a uniform third-party transfer deadline, there would no longer be a reason to assign priority to interdistrict transfers, with the result that some institutions could receive transfers from certain out-of-district institutions later than they generally receive these transfers today.

Although the proposed third-party deadline would require Reserve Banks to provide funds transfer services later in the day, the proposal would not require depository institutions to remain open for funds until 6:00 p.m. Institutions in districts that currently have earlier third-party deadlines, however, may feel obligated to extend their internal operating hours in order to post incoming transfers to their customers' accounts on a timely basis and to facilitate their reserve account management.

In order to achieve the benefits of the proposed changes to the Fedwire operating hours, while being sensitive to its potential adverse effects, the Board proposes that the new deadline, if adopted, be implemented in two phases. During a six month transition, the nationwide interdistrict third-party deadline would be extended from 5:00 p.m. to 5:45 p.m., and districts with an intradistrict third-party transfer deadline earlier than 5:45 p.m. would move their deadline to that time. Districts that now have an intradistrict third-party deadline of 6:00 p.m. would maintain this deadline during the transition period. Six months following the implementation of the transition phase, the Federal Reserve Banks would establish a 6:00 p.m. uniform interdistrict and intradistrict third-party deadline, unless experience showed that the later third-party transfer deadline would hinder reserve account management, result in a significant increase in requests to extend the final Fedwire closing time, or otherwise significantly disrupt depository institutions' operations.

The Board requests comment on whether a 60-day period from final adoption of the revised third-party deadlines to the implementation of the six-month transition phase would provide adequate lead time for depository institutions. In addition, the Board requests comment on whether a six-month transition period is sufficient to determine whether the later third-party deadline would have any adverse effects. Finally, if experience during the transition phase indicates that a 6:00 p.m. third-party deadline would be disruptive to depository institutions' operations, the Board requests comment on whether a uniform 5:45 p.m. intradistrict and interdistrict deadline should be established, or whether districts with 6:00 p.m. intradistrict deadlines should be permitted to retain these later deadlines.

Segmented Settlement Period

Some depository institutions have suggested that a more orderly settlement of end-of-day reserve positions could be facilitated, especially in connection with a later interdistrict third-party transfer deadline, by restricting the last 15 minutes of the final one-half hour settlement period to transfers sent to receiving institutions for their own accounts (and not for the accounts of respondent institutions). Transfer received by an institution for its own account are generally known to the institution in advance. Whereas an institution can control the timing of transfers sent on behalf of respondent institutions by establishing a deadline for these transfers prior to the Fedwire closing time, last minute transfers received on behalf of respondent institutions may not be anticipated or controlled by the receiving correspondent institution, complicating the correspondent's reserve account management. Restricting transfers that are sent during the last 15 minutes of Fedwire operations to those for which the receiving account-holding institution, and not its respondent, is the beneficiary could facilitate the receiving institution's reserve account management. Segmenting the settlement period into two parts may require new funds transfer type codes and operating changes by both depository institutions and the Reserve Banks.

The Board requests comment on the benefits of a segmented settlement period, as well as any adverse effects it may have on institutions that maintain balances at correspondents. In addition, the Board requests comment on whether, if a segmented settlement period were desirable, the last 15 minutes be further restricted to exclude transfers originated by an institution on

[4] The settlement period is used for bank-to-bank settlemnt transfers, including correspondent/respondent transfers as well as transfers between banks on their own behalf.

behalf of a respondent. Some banks have indicated that because competitive pressure would preclude them from imposing a deadline for the origination of transfers on behalf of respondents that is earlier than the Fedwire deadline, the advantages of a segmented settlement period would not be realized without restrictions on both the origination and receipt of respondent transfers.

If a segmented settlement period were adopted, the Board requests comment on whether it should be implemented concurrent with that 6:00 p.m. third-party deadline; that is, after the six-month transition phase, or whether an alternate implementation schedule would be preferable. Finally, the Board requests comment on how the Federal Reserve should manage extensions of the Fedwire final closing time under a segmented settlement period, e.g., should extensions of the final closing time involve discrete extensions of the two segmented period.

Book-Entry Securities Closing Time

Currently, the book-entry securities transfer wire is scheduled to close nationwide at 2:30 p.m. for interdistrict and intradistrict transfers, at 2:45 p.m. for dealer turnaround, and at 3:00 p.m. for reversal transactions.[5] The Twelfth District remains open, however, for intradistrict transfer until 5:30 p.m., with a 6:00 p.m. close for intradistrict reversals. These later operating hours are more consistent with West Coast business hours, and enable Twelfth District institutions to transfer book-entry securities among themselves after the securities transfer system is closed for the rest of the country. The dollar volume of Twelfth District securities transfers processed after the actual national closing time is relatively insignificant. The Board requests comment on whether the later Twelfth District closing times create competitive inequities with institutions in other districts; whether the closing of the book-entry securities transfer system should be uniform nationwide; and if so, what the impact of an earlier intradistrict closing time would be on Twelfth District institutions.

Uniform Opening Time

The Board's recent proposal to price daylight overdrafts [6] may have implications for Fedwire opening times. The Fedwire funds transfer operating schedule currently provides that each district open for processing no later than 9:00 a.m.; eight districts begin funds transfer operations between 8:00 a.m. and 8:45 a.m. The opening times for the Federal Reserve's book-entry securities service are even more disparate, ranging from 7:45 a.m. to 11:00 a.m. The current opening times for the funds transfer and book-entry securities transfer services are shown in the table below.

CURRENT FEDWIRE OPENING TIMES

[Eastern Time]

District	Funds Transfer	Book-Entry Securities Transfer
Boston	8:45 a.m.	8:00 a.m.
New York	8:00–8:30	8:00–8:30
Philadelphia	8:15–8:30	8:00–8:45 [a]
Cleveland	8:00	8:00
Richmond	8:30	8:30 [b]
Atlanta	8:30	7:45–8:00
Chicago	8:00–9:00	8:45–9:00
St. Louis	8:30	9:00
Minneapolis	9:00	8:15–8:30
Kansas City	9:00	9:00
Dallas	9:00	9:00
San Francisco	9:00	10:00 [c]

[a] Philadelphia opens at 8:00 a.m. for intradistrict securities transfer processing, and at 8:45 a.m. for interdistrict securities transfer processing.

[b] The Charlotte Branch opens at 8:00 a.m. for securities transfer processing.

[c] The San Francisco Head Office and the Salt Lake City Branch open at 10:00 a.m. for securities transfer processing; the Portland, Seattle, and Los Angeles Branches open at 11:00 a.m. for securities transfer processing.

Differences in Fedwire opening times among Reserve Banks may inhibit the efficient movement of funds, especially in an environment where intraday balances have real economic value. For example, if the Board's recent proposal to price daylight overdrafts is adopted, it is possible that institutions may contract to buy and return Federal funds at specified times during the day. Inasmuch as the market for Federal funds is a national market, differences in Fedwire opening times could artifically constrain private contracting among buyers and sellers of Federal funds.

On a more technical level, under the Board's proposal, pricing would apply to average daylight overdrafts, which would be calculated using the period of time that Fedwire is open. Thus, differences in operating hours across Federal Reserve districts could result in differences in the fee assessed for a given quantity of daylight overdrafts.

An objective of the Board's recent proposal regarding the measurement of intraday reserve and clearing account balances is to eliminate Federal Reserve intraday float. National uniformity in Fedwire operating hours supports this objective because different opening times among Reserve Banks can contribute to intraday Federal Reserve float. Accounts of institutions originating funds or book-entry securities transfers are debited or credited at the time the originating institution's Reserve Bank processes the transfer. If the receiving Reserve Bank had not yet begun processing for the day, the offsetting entry to the account of the receiving institution would not be posted until that Reserve Bank processes the transfer, creating Federal Reserve intraday credit float (in the case of funds transfers) or debit float (in the case of book-entry securities transfers). Establishment of uniform opening, as well as closing, times would reduce the amount of intraday float generated by the Federal Reserve's Fedwire services.

Five Federal Reserve districts currently start book-entry securities transfer processing earlier than funds transfer processing. If the Board prices book-entry securities daylight overdrafts and includes these overdrafts within an institution's net debit cap, depository institutions may seek to avoid incurring a daylight overdraft from the purchase of a book-entry security by arranging for covering funds prior to the receipt of the incoming security. A uniform opening time for the funds transfer and securities transfer services, or a uniform book-entry securities transfer opening time that is slightly later than that for the funds transfer service, would provide institutions the opportunity to fund their accounts to cover anticipated securities purchases.

The Board requests comment on whether the Federal Reserve should adopt a uniform opening hour of 8:30 a.m. for the Fedwire funds and book-entry securities transfer services, or whether the book-entry securities transfer service opening time should be later than that for the funds transfer service. In addition, the Board requests comment on whether there are reasons other than the Board's risk reduction proposals to establish uniform funds and securities transfer opening times.

By order of the Board of Governors of the Federal Reserve System, October 4, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–23904 Filed 10–10–89; 8:45 am]

BILLING CODE 6210–01–M

[5] These closing times are routinely extended to accommodate peak afternoon securities transfer volume. The actual average reversal closing time to date in 1989 is 4:20 p.m. This proposal would not affect the Federal Reserve's book-entry securities transfer extension policy.

[6] See 54 FR 26094, June 21, 1989.

First Sioux Bancshares, Inc.; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89–

19938) published at page 35247 of the issue for Thursday, August 24, 1989, and supersedes the correction notice published at page 41341 on Friday, October 6, 1989.

Under the Federal Reserve Bank of Chicago, the entry for First Sioux Bancshares, Inc., is amended to read as follows:

1. First Sioux Bancshares, Inc., Sioux Center, Iowa; to engage *de novo* through its subsidiary, First Sioux Financial, Sioux Center, Iowa, in the combination of consumer financial counseling, investment advice, securities brokerage and insurance annuity sales pursuant to §§ 225.25 (b)(15), (b)(4), (b)(20) and (b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Comments on this application must be received by October 26, 1989.

Board of Governors of the Federal Reserve System, October 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-24090 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; Minor Alteration to an Existing System of Records

AGENCY: Office of the Assistant Secretary for Public Affairs, HHS.

ACTION: Notification of minor revisions to a Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Office of the Assistant Secretary for Public Affairs (OASPA) is publishing a notice of minor revisions to system of records 09-90-0058, "Freedom of Information Case Files and Correspondence Control Log, HHS/OS/ASPA/FOIA." System of records 09-90-0058 is being revised to make minor editorial changes, update addresses and telephone numbers of system managers, and to reflect more accurately current procedures followed by staff personnel in processing FOIA requests and disposing of case files and correspondence control logs. In addition, the language of the fourth routine use (litigation) has been altered to reflect OMB guidance about disclosures to the Department of Justice, courts, or tribunals for litigation purposes.

DATES: HHS invites interested parties to submit comments on the amended routine use on or before November 13, 1989. The amendment will become effective 30 days after publication unless HHS receives comments which would result in a contrary determination.

ADDRESS: Comments should be addressed to: HHS Privacy Act Officer, Room 645-F Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Comments will be available for inspection in room 645-F at the above address, Monday through Friday, between the hours of 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas E. Donnelly, HHS Privacy Act Officer, Room 645-F Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone: (202) 472-7453.

SUPPLEMENTARY INFORMATION: This system notice was last published in the **Federal Register**, Vol. 47, No. 198, p. 45534 on Octoer 13, 1982. For convenience and clarity, HHS is publishing the entire text of this notice.

Dated: October 2, 1989.

Mariam Bell,

Deputy Assistant Secretary for Public Affairs.

09-90-0058

SYSTEM NAME:

Freedom of Information Case Files and Correspondence Control Log, HHS/OS/ASPA/FOIA.

SECURITY CLASSIFICATION

None.

SYSTEM LOCATION:

Freedom of Information/Privacy Act Division, Room 645F Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201 (see Appendix I, following, for additional locations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or organizations requesting access to inspect and/or copy records of the Department under provisions of the Freedom of Information Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other individually identifying information about the requester, the request, and records reflecting processing of the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act, 5 U.S.C. 552.

PURPOSE:

Records are used by the Freedom of Information staff involved in FOIA correspondence and processing, as well as by appeals officials and members of the Office of General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed from this system for routine uses to:

1. The Department of Justice for the purpose of obtaining advice as to whether or not the records should be disclosed.

2. A contractor for the purpose of collating, aggregating, analyzing, or otherwise refining records in this system. The contractor shall be required to maintain Privacy Act safeguards in working with such records.

3. A congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

4. The Department of Justice, or to a court or other tribunal or to another party before such tribunal, when (a) HHS, or any component of HHS; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The original, or a copy, of the incoming request and the written response are maintained in case file folders and stored in metal file cabinets. Cross-reference data is maintained in a correspondence control log stored in a personal computer and printed as hard copy on paper as needed.

RETRIEVAL:

Records are almost always retrieved by the name of the individual who made the FOIA request during a given calendar year. In addition, each request

is assigned a case file number that identifies the year in which the request was made and the number of the request. For example, 89–432. Records also can be retrieved by this case file number.

SAFEGUARDS:

1. Authorized Users: Access is limited to involved program officials, FOIA staff, appeals officials, and members of the Office of General Counsel who are involved in the processing of FOIA requests and appeals.

2. Physical Safeguards: The case file folders are stored in file cabinets in secure areas that are either occupied by staff personnel involved in processing FOIA requests and appeals or locked up during non-working hours, or whenever staff are not present in these areas. In addition, entrance to the buildings where case files are maintained is controlled by security guards.

3. Procedural Safeguards: Access to records is limited to those staff members who are familiar with both the FOIA and the Privacy Act. System Managers are held responsible for safeguarding the records under their control.

RETENTION AND DISPOSAL:

The National Archives and Records Administration issues General Records Schedules that provide disposition authorization for records common to several or all agencies of the Federal Government. Schedule 14 (June 1988) sets forth detailed disposition requirements for FOIA records.

1. Case files are retained for two years and then destroyed when access to all requested records is granted.

2. Case files are destroyed after six years when access to all or part of the records is denied.

3. In the event of an appeal, the files are destroyed six years after final determination by the Department, or three years after final adjudication by the courts, or six years after the time at which a requester could file suit, whichever is later.

4. Correspondence control logs are destroyed six years after the date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Freedom of Information/ Privacy Act Division, 645F Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (See Appendix I, following, for additional system managers.)

NOTIFICATION PROCEDURES:

System managers. Addresses same as above.

RECORD ACCESS PROCEDURES:

A person may request access to these records in writing, in person, or by telephone to the system managers listed above and in Appendix I. The managers may require proof of identity whenever they are in doubt about the identity of the person making the request.

CONTESTING RECORD PROCEDURES:

A person may contest information in these records by contacting the system managers listed above and in Appendix I, and by identifying the information contested; the corrective action sought; and reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals and organizations making requests under the FOIA, and components of the Department and other agencies that search for and provide the records and related correspondence that are maintained in the case files.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Appendix I

HHS Freedom of Information Officer, Room 645F Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Tel: (202) 472–7453.

SSA Freedom of Information Officer, Room 4–H–8 Annex Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Tel: (301) 965–3962.

HCFA Freedom of Information Officer, Room 100 Professional Building, Office of Public Affairs, 6660 Security Blvd, Baltimore, Maryland 21207. Tel: (301) 966–5352.

PHS Freedom of Information Officer, Room 13–C–24 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–5252.

FDA Freedom of Information Officer, HFW–35, Room 12A16 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–1813.

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B39, 9000 Rockville Pike, Bethesda, Maryland 20892. Tel: (301) 496–5633.

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333. Tel: (404) 639–2388.

HRSA Freedom of Information Officer, Room 1443 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–2086.

ADAMHA Freedom of Information Officer, Room 12–C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–3783.

IHS Freedom of Information Officer, Room 5–A–39 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Tel: (301) 443–3593.

[FR Doc. 89–23886 Filed 10–10–89; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Consumer Participation; Open Meeting; Boston District Office

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Boston District Office, chaired by Edward McDonnell, District Director. The topic to be discussed is food labeling.

DATES: Wednesday, November 15, 1989, 9:30 a.m. to 11 a.m.

ADDRESSES: Food and Nutrition Consignments, 55 State St., Springfield, MA 01103.

FOR FURTHER INFORMATION CONTACT: Paula Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Stoneham, MA 02180, 617–279–1479.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymakers decisions on vital issues.

Dated: October 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–23921 Filed 10–10–89; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting; Los Angeles District Office

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: Los Angeles District Office, chaired by George Gerstenberg, District Director. The topic to be discussed is food labeling.

DATE: Thursday, October 26, 1989, 10 a.m. to 12:30 p.m.

ADDRESS: Maricopa County Office Bldg., University of Arizona, 4341 East Broadway, Phoenix, AZ 85040.

FOR FURTHER INFORMATION CONTACT: Irene Caro, Consumer Affairs Officer, Food and Drug Administration, 1521 West Pico Blvd., Los Angeles, CA 90015, 213–252–7597.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 4, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–23922 Filed 10–10–89; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details for approximately one-half hour at the beginning of the first session of the first day of the meetings. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, Room 5C05, National Institutes of Health, Bethesda, Maryland 20892, (301–496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee B.

Executive Secretary: Dr. David Lavrin, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–9666.

Date of Meeting: October 31, 1989.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: 8:30 a.m. to 9:00 a.m.

Closed: 9:00 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee A.

Executive Secretaries: Dr. Walter Spieth, Dr. Maria Mannarino, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–9666.

Dates of Meeting: November 29–30—December 1, 1989.

Place of Meeting: Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 29, 8:30 a.m.–9:00 a.m.

Closed: November 29, 9:00 a.m. to recess. November 30, 8:30 a.m. to recess. December 1, 8:30 a.m. to adjournment.

Name of Committee: Gerontology and Geriatrics Review Committee, Subcommittee C.

Executive Secretary: Dr. James Harwood, Building 31, Room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301–496–9666.

Date of Meeting: November 2–3, 1989.

Place of Meeting: Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: November 2, 8:30 to 9:00 a.m.

Closed: November 2, 9:00 a.m. to recess. November 3, 9:00 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23945 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee (AMS) of the National Institute of Arthritis and Musculoskeletal and Skin Diseases on November 17, 1989, Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland. The meeting will be open to public from 8:30 a.m. to 9 a.m. to discuss administrative details or other issues relating to the committee activities. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

The meeting will be closed to the public from 9 a.m. to adjournment in accordance wth the provisions set forth in secs. 52b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning this meeting may be obtained from Dr. Melvin H. Gottlieb, Executive Secretary, Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee, NIAMS, Westwood Building, Room 5A07, Bethesda, Maryland 20892, (301) 496–0754.

Mrs. Carole Frank, Committee Management Officer, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, Building 31, Room 4C27, Bethesda, Maryland 20892, 301–496–0803, will provide summaries of the meeting and roster of the committee members upon requst.

(Catalog of Federal Domestic Assistance Program No. 13.846, project grants in arthritis, musculoskeletal and skin diseases research, National Institutes of Health)

Dated: October 3, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89–23944 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Federick Cance Research Facility (FCRF) Advisory Committee, National Cancer Institute, November 29, 1989, Building 549, Executive Board Room, at the NCI Federick Cancer Research Facility, Frederick, Maryland 21701–1013.

The meeting will be open to the public on November 29 from 8:30 a.m. to approximately 11:00 a.m. to discuss administrative matters, future meetings, concept review of collaborative research by an FCRF contractor, and status of activities of the Crystallography Laboratory. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 29 from approximately 11:00 a.m. to adjournment for discussions of previous site visit reports of research being conducted by the Basic Research Program's Laboratory of Chemical and Physical Carcinogenesis and the Mammalian Genetics Laboratory. These discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contractor, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lunsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301, 496–5708), will provide summaries of the meeting and rosters of committee members, upon request. Dr. Cedric W. Long, Executive Secretary, Federick Cancer Research Facility Advisory Committee, National Cancer Institute Fredericak Cancer Research Facility, Building 427, Frederick, Maryland 21701–1013 (301, 698–1108) will provide substantive program information upon request.

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23942 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Biometry and Epidemiology Contract Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 30, 1989, Executive Plaza North, Conference Room G, 6120 Executive Boulevard, Rockville Maryland 20852.

This meeting will be open to the public on October 30 from 9 a.m. to 10 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 30 from 10 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301–496–7030) will provide substantive program information, upon request.

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23943 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Division of Research Resources; Meeting of the General Clinical Research Centers Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), October 25–26, 1989, at the Holiday Inn, Georgetown, Canal Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

The meeting will be open to the public on October 25 from 8:30 a.m. to 10 a.m. during which time there will be comments by the Acting Director, DRR; and an update on the General Clinical Research Centers Program by Dr. Judith L. Vaitukaitis, Director, GCRC Program, DRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Public Law 92–463, the meeting will be closed to the public on October 25 from 10 a.m. to 6 p.m., and on October 26 from 8 a.m. to 4 p.m., for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Michael Fluharty, Public Affairs Specialist, DRR, NIH, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Bela J. Gulyas, Executive Secretary, General Clinical Research Centers Committee, (301) 496–9971, will furnish information on the agenda upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–23941 Filed 10–10–89; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for November through December 1989, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that

anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	November-December 1989 meeting	Time	Loation
Behavioral and Neurosciences-1, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	Nov. 15-17	9:00	The Savory Suites Hotel, Washington, DC.
Behavioral and Neurosciences-2, Dr. Luigi Giacometti, Rm. 303, Tel. 301-496-5352.	Nov. 9	8:30	The Savory Suites Hotel, Washington, DC.
Biological Sciences-1, Dr. James R. King, Rm. A22, Tel. 301-496-1067.	Nov. 29-Dec. 1	8:30	St. James Hotel, Washington, DC.
Biological Sciences-2, Dr. Syed Amir, Rm. 326, Tel. 301-496-3117.	Nov. 9-11	8:30	Holiday Inn, Houston TX.
Biological Sciences-3, Mr. Gene Headley, Rm. A27, Tel. 301-496-7287.	Nov. 13-14	8:30	St. James Hotel, Washington, DC.
Biomedical Sciences, Dr. Charles Baker, Rm. 219, Tel. 301-496-7150.	Nov. 27-29	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Clinical Sciences-1, Ms. Jo Pelham, Rm. 319, Tel. 301-496-7477.	Nov. 16-17	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-2, Ms. Jo Pelham, Rm. 319, Tel. 301-496-7477.	Dec. 4-5	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Immunology, Virology & Pathology, Dr. Lynwood Jones, Rm. A20, Tel. 301-496-7510.	Nov. 15-17	8:30	Holiday Inn Crown Plaza, Rockville, MD.
International & Cooperative Projects, Dr. Sandy Warren, Rm. A27, Tel. 301-496-7600.	Nov. 29-Dec. 1	8:30	The Savoy Suites Hotel, Washington, DC.
Physiological Sciences, Dr. Nicholas Mazarella, Rm. A25, Tel. 301-496-1069.	Nov. 16-17	8:30	Holiday Inn Crown Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health HHS).

Dated: October 3, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-23948 Filed 10-10-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2064]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extention, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 4, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Survey of Tenants in Certain Properties with HUD-Held and Foreclosed Mortgages.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This information will help the Department determine how many units must be made available for low- and moderate-income tenants after the mortgage is assigned by HUD. This data collection effort is required by Section 181 of the 1987 Housing and Community Development Act, as amended.

Form Number: HUD-9934, 9934A, and 9934B.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organization.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
One-Time Burden in 1989 for Currently HUD-Held Inventory							
Project Owners							
HUD-9934	724		1		4		2,896
HUD-9934A	724		1		.25		181
HUD-9934B	724		1		1.5		1,086
Subtotal							4,163
Tenants							
HUD-9934	86,913		1		.066		5,736
Total							9,899

Proposal: Section 8 Housing Assistance Payments Program for the Disposition of HUD-Owned Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Under the Housing Assistance Program (HAP), Section 8 owners will notify each family, at least 90 days before the expiration of the contract term, that they will no longer receive assistance and of the increased rental they will be required to pay.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HAP Contract Certification	486		1		1		486

Total Estimated Burden Hours: 486.

Status: New.

Contact: Donald Myers, HUD, (202) 755-7374, John Allison, OMB, (202) 395-6880.

Dated: October 4, 1989.

[FR Doc. 89-23972 Filed 10-10-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-2061]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 2, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Rent Increase Budget Worksheet

Office: Housing

Description of the Need for the Information and Its Proposed Use: Owners of certain subsidized, cooperative, and Section 202 projects will be required to submit a Budget Worksheet annual. The Department will use the worksheet to evaluate owner expense estimates and calculate allowable rents and utility allowance.

Form number: None

Respondents: Businesses or Other For-Profit and Federal Agencies or Employees

Frequency of Submission: Annually

Reporting Burden:

	Number of Respond-ents	X	Frequency of Response	X	Hours per Re-sponse	=	Burden Hours
Budget Worksheet	12,500		1		2		25,000

Total Estimated Burden Hours: 25,000
Status: Reinstatement
Contact: James J. Tahash, HUD, (202) 426–3970. John Allison, OMB, (202) 395–6880.

Dated: October 2, 1989.

Proposal: Title I Property Improvement and Manufactured Home Programs (24 CFR Part 201).
Office: Housing.

Description of the Need for the Information and Its Proposed Use: The information collected is in association with HUD requirements and customary industry practices regarding loans for improvement of property and purchase of manufactured housing as reflected in HUD regulations codified at 25 CFR Part 201. These information collections are necessary to make loans and to administer the Title I programs.
Form number: HUD–92802, 56001, 56001(MH), 56004, 55083, FH–1(HP), HUD–55013.
Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of Respond-ents	X	Frequency of Response	X	Hours per Response	=	Burden Hours
Prior Approval	50		1.00		0.5		25
HUD–92802	2,600		1.00		.25		650
HUD–55014	30		533		7.098		113,500
Notification of Warranty Problems	15		1.00		.25		4
HUD–56001	200,000		1.00		.5		100,000
HUD–56001(MH)	25,000		1.00		.5		12,500
FH–1	100		1.00		.5		50
Manufactured Home Loans	200		1.00		.25		50
HUD–55013	5,300		1.00		1.0		5,300
Requirements for Dealer Loans	50		1.00		.25		13
Requirements for Dealer Loans	100		1.00		.25		25
HUD–56004	200,000		1.00		.10		20,000
Post-Disbursement Loan Requirement	50		1.0		.5		25
HUD–55083	9,000		1.0		.3		2,700
Reports on Property Condition	6,011		1.00		1.0		6,011
Extension of Claim Period	9,000		1.00		.10		900
Recordkeeping	30		1.5		36		1,620

Total Estimated Burden Hours: 263,373.
Status: Extension.
Contact: Lana McKee, HUD, (202) 755–6880. John Allison, OMB, (202) 395–6880.

Dated: October 2, 1989.

[FR Doc. 89–23887 Filed 10–10–89; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–89–2062]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 3, 1989.

John T. Murphy,
Information Policy and Management Division.

Proposal: Minimum Property Standards—Request for Local Code Review
Office: Housing

Description of the Need for the Information and Its Proposed Use: The information is needed to determine if state and local codes are comparable to national model codes. If the state and local codes have been approved in the past, the information will determine if there have been changes. If the information is not collected about the state or local codes, parties would have to comply with both state or local codes and HUD standards (model codes).

Form Number: None

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Annual review	1,350		1		8		10,800
Recordkeeping	1,350		1		1		1,350

Total Estimated Burden Hours: 12,150

Status: Extension

Contact:

Henry Omson, HUD, (202) 755-5798.
John Allison, OMB, (202) 395-6880.

Dated: October 3, 1989.

[FR Doc. 89-23888 Filed 10-10-89; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-09-4410-10]

Initiation of Resource Management Plan (RMP) and Environmental Impact Statement (EIS) and Invitation To Identify Issues, for the Owyhee Resource Area in Idaho

AGENCY: Bureau of Land Management.

ACTION: Notice of intent to initiate a resource management plan (RMP) and prepare an environmental impact statement (EIS) for the Owyhee Resource Area in Southwestern Idaho and invitation to participate in the identification of issues (Scoping).

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM), Boise District will prepare a land use plan (RMP) and an environmental impact statement (EIS) for the Owyhee Resource Area in Owyhee County, Idaho. The (RMP) land use plan will guide resource management in the Owyhee Resource Area over the next 20 years. The RMP will be prepared under guidance provided at 43 CFR 1600 (BLM Planning Regulations).

DATES: Any public meetings pursuant to 40 CFR 1501.7 (NEPA regulations) and 43 CFR 1610.2 (BLM planning regulations) to help identify and determine the issues to be addressed and the scope of the EIS and RMP will be announced in the local media and through a mailing list. Specific dates and locations for meetings have not yet been determined.

ADDRESS: Comments should be sent to: Owyhee Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Owyhee Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705.

SUPPLEMENTARY INFORMATION: The Owyhee Resource Area located in southwestern Idaho's Owyhee County encompasses approximately 1,014,000 acres administered by BLM. The area is bounded on the west by Oregon, on the south by Nevada, on the north by the Snake River and on the east by Castle Creek, Deep Creek, the Owyhee River, and the Duck Valley Indian Reservation. The planning process (which will include the NEPA process) will evaluate a range of alternative resource uses for this area and will address issues identified during the scoping process.

Potential issues to be addressed during the process include, but are not limited to, land tenure adjustments, vegetation management (including needs for livestock grazing, wildlife, wild horses, riparian values, threatened and endangered species, watershed protection, and fire management), and special management areas (including wilderness, areas of critical environmental concern, and wild and scenic rivers).

The RMP and EIS will be prepared by an interdisciplinary team primarily from the Owyhee Resource Area. Team disciplines will include rangeland management, wildlife, soils, realty, minerals, recreation, vegetation, fire, cultural resources, and economics. Additional technical support and expertise will be available as needed. Public participation will occur throughout the planning process. The public will be specifically invited to participate during four steps in the planning process: (1) Identification of Issues, (2) Review of Proposed Planning Criteria, (3) Review of Draft RPM/EIS, and (4) Review of Proposed Plan/Final EIS. Invitations for public participation will be announced through the local media and our mailing list. The planning process is currently scheduled for completion in about three years.

Dated: September 25, 1989.

J. David Brunner,

Boise District Manager.

[FR Doc. 89-23908 Filed 10-10-89; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Development of the South Denali Visitor Center, Denali State Park, Alaska

SUBJECT: Amended Notice of Intent to Prepare an Environmental Impact Statement.

ACTION: Draft Environmental Impact Statement for Proposed Development of the South Denali Visitor Center, Denali State Park, Alaska.

SUMMARY: National Park Service cooperation with the State of Alaska in the development of a new visitor center for Denali State Park was one of the actions contained in the 1985 General Management Plan for Denali National Park. A notice of intent to prepare an Environmental Impact Statement (EIS) appeared in 51 FR 4243-4244 (February 3, 1986).

Preparation of the EIS was deferred until an updated Denali State Park Master Plan could be completed in July 1986. Extensive scoping and public involvement, including 32 public meetings, were conducted as part of the state planning process for this area. Issues and concerns for the State plan concept of a proposed visitor destination complex, of which the visitor center is one part, were identified. Those issues and concerns relating to the construction of a visitor center will be fully taken into account in the National Park Service EIS. Nevertheless,

additional opportunity to participate in scoping is noticed below.

The National Park Service is now preparing a draft EIS that evaluates three alternatives for proposed Federal development of a visitor center at the northern end of South Denali State Park: (1) High lands alternative for a region centering on High Lake; (2) a low lands alternative in the region extending along the park's highway and west to the Chulitna River from mile 163 north to the state park boundary; and (3) no action.

The EIS will address major issues and concerns raised through both the State and this newly announced scoping process. In addition to the proposed Federal action, the EIS will also evaluate the secondary and cumulative environmental effects of other non-Federal developments that may be associated with the visitor center, which includes a lodge, campground, trails, hostel, employee housing, and related parking, access, circulation and utilities.

A more indepth discussion of issues identified to date is contained in the Denali State Park Master Plan. The plan is available from the Alaska Division of Parks and Outdoor Recreation, P.O. Box 107001, Anchorage, Alaska 99510–7001.

This amendment is notification of an additional opportunity for participation in the scoping of this EIS. Additional comments on the scope of the draft EIS for this proposed visitor center project are hereby invited. It is anticipated that the draft will be ready for public review in 1990.

DATES: Written comments should be received no later than Monday, November 13, 1989, however, comments received after that date will be considered to the extent possible.

ADDRESS: Comments should be sent to: Janet McCabe, National Park Service, Alaska Regional Office, 2525 Gambell Street, Room 107, Anchorage, Alaska 99503–2892.

James W. Stewart,

Acting Associate Director, Planning and Development.

[FR Doc. 89–23861 Filed 10–10–89; 8:45 am]

BILLING CODE 4310–70–M

Subsistence Resource Commission Meeting; Lake Clark National Park

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Lake Clark National Park and the Chairperson of Lake Clark National Park Subsistence Resource Commission announce a forthcoming meeting of the Lake Clark National Park Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of Guests.

(2) Review of minutes from last meeting.

(3) Old business.

(4) Notice of upcoming Chairman's meeting.

(5) Review draft regulation for subsistence hunting roster plan.

(6) Review progress on preparation of rosters for Iliamna, Newhalen, Nondalton, Port Alsworth.

(7) New business.

DATE: The meeting will begin at 10:00 a.m. on November 6, 1989 and conclude that evening.

ADDRESS: The meeting will be held at Pedro Bay School, Pedro Bay, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Hutchison, Superintendent, Lake Clark National Park and Preserve, 222 W. 7th Ave., #61, Room 543, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: The Lake Clark National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

David B. Ames,

Acting Regional Director.

[FR Doc. 89–23860 Filed 10–10–89; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 30, 1989. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 26, 1989.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

El Paso County

Carlton House, Pine Valley, US Air Force Academy, Colorado Springs vicinity, 89001785

IOWA

Black Hawk County

Weis, Henry, House, 800 W. Fourth St., Waterloo, 89001779

Dubuque County

Loetscher, T. Ben, House, 160 S. Grandview Ave., Dubuque, 89001777

Floyd County

Suspension Bridge, Over the Big Cedar River at end of Clark St., Charles City, 89001778

Jackson County

Village of St. Donatus Historic District, Jct. of US 52/Main St. and First St., St. Donatus, 89001870

Mahaska County

Rock Island Passenger Depot, Rock Island Ave. between 1st and 2nd Sts., Oskaloosa, 89001780

Polk County

Chatauqua Park Historic District (Suburban Development in Des Moines between the World Wars, 1918—1941 MPS), Roughly bounded by 16th St., Hickman Rd., and Chautauqua Pkwy., Des Moines, 89001776

LOUISIANA

Caddo Parish

Forest Home, Jct. Johns Rd. and Johns Gin Rd., Four Forks vicinity, 89001873

Calcasieu Parish

Lake Charles City Hall, Old, Ryan St. at Kirby St., Lake Charles, 89001872

Catahoula Parish

Wildwood, Off LA 15, Sicily Island vicinity, 89001874

Iberia Parish

Romero, Andrew, House, 310 Marie St., New Iberia, 89001855

Iberville Parish

Plaquemine Historic District, Roughly Church St., Court St., Railroad Ave., and Main St., Plaquemine, 89001791

MASSACHUSETTS

Hampshire County

Hollis, Thomas, Historic District, Washington St. from Winter to Highland Sts., Holliston, 89001786

Worcester County

Harvard Shaker Village Historic District, Roughly Shaker Rd., S. Shaker Rd., and Maple Ln., Harvard, 89001871

MINNESOTA

Beltrami County

Nymore Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), First St. over Mississippi River, Bemidji, 89001849

Blue Earth County

Kennedy Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 167 over LeSueur River, Mankato vicinity, 89001832

Zieglers Ford Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 96 over Big Cobb River, Good Thunder Vicinity, 89001830

Fillmore County

Bridge No. L4770 (Minnesota Masonry-Arch Highway Bridges MPS), Twp. Rd. 213 over Mahoney Creek Fountain vicinity, 89001827

Goodhue County

Bridge No. 12 (Iron and Steel Bridges in Minnesota MPS), Twp Rd. 43 over Bullard Creek, Red Wing vicinity, 89001837

Third Street Bridge (Iron and Steel Bridges in Minnesota MPS), Third St. over Cannon River, Cannon Falls, 89001836

Hennepin County

Cedar Avenue Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), Tenth Ave. over Mississippi River, Minneapolis, 89001845

Interlachen Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), William Beery Dr. over Minnesota Transportation Museum street railway track in William Beery Park, Minneapolis, 89001840

Queene Avenue Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), W. Lake Harriet Blvd. over Minnesota Transportation Museum street railway track, Minneapolis, 89001847

Lac Qui Parle County

Yellow Bank Church Campground Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 76 over Yellow Bank River, Odessa vicinity, 89001831

Pipestone County

Split Rock Bridge, (Minnesota Masonry-Arch Highway Bridges MPS) Co. Rd. 54 over Split Rock Creek, Ihlen vicinity, 89001823

Ramsey County

Bridges No. L-5853 and 92247 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Lexington Ave. in Como Park, St. Paul, 89001842

Intercity Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), Ford Pky. over Mississippi River, St. Paul, 89001838

Mendota Road Bridge (Minnesota Masonry-Arch Highway Bridges MPS), Water St. over Pickerel Lake Outlet, St. Paul, 89001825

Robert Street Bridge (Reinforced-Concrete Highway Bridges in Minnesota MPS), Robert St. over Mississippi River, St. Paul, 89001846

Selby Avenue Bridge (Iron and Steel Bridges in Minnesota MPS), Selby Ave. over Soo Line railroad tracks, St. Paul, 89001833

Seventh Street Improvement Arches (Minnesota Masonry-Arch Highway Bridges MPS), E. 7th St. over Burlington Northern right-of-way, St. Paul vicinity, 89001828

Wabasha Street Bridge (Iron and Steel Bridges in Minnesota MPS), Wabasha St. over Mississippi River, St. Paul, 89001834

Rice County

Dump Road Bridge (Iron and Steel Bridges in Minnesota MPS), Twp. Rd. 45 over Straight River, Faribault vicinity, 89001835

Faribault Viaduct (Reinforced-Concrete Highway Bridges in Minnesota MPS), Division St. over Straight River, Faribault, 89001848

Rock County

Bridge No. L-2162 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Co. Rd. 15 over Split Rock Creek, Jasper vicinity, 89001839

Bridge No. L-2315 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Twp. Rd. 89 over Rock River, Luverne vicinity, 89001841

Bridge No. L-2316 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Twp. Rd. 89 over Rock River, Luverne vicinity, 89001843

Bridge No. L-4646 (Reinforced-Concrete Highway Bridges in Minnesota MPS), Sixth St. over Spring Brook, Beaver Creek, 89001844

St. Louis County

Bridge No. L6007 (Minnesota Masonry-Arch Highway Bridges MPS), Skyline Pky. over Stewart Creek, Duluth, 89001826

Scott County

Bridge No. L3040 (Minnesota Masonry-Arch Highway Bridges MPS), Co. Rd. 51, N of MN 19, Belle Plain vicinity, 89001829

Wabasha County

Zumbro Parkway Bridge (Minnesota Masonry-Arch Highway Bridges MPS), Co. Rd. 68 over Zumbro River, Zumbro Falls vicinity, 89001824

NEW YORK

Cayuga County

Lakeside Park, NY 38A at Owasco Lake, Owasco, 89001790

NORTH CAROLINA

Lenoir County

Atlantic and North Carolina Railroad Freight Depot (Kinston MPS), E. Blount St. between N. Queen and N. McLewean Sts., Kinston, 89001768

Baptist Parsonage (Kinston MPS), 211 S. McLewean St., Kinston, 89001767

Blalock, Robert L., House (Kinston MPS), 300 S. McLewean St., Kinston, 89001772

Canady, B. W., House (Kinston MPS), 600 N. Queen St., Kinston, 89001771

Hill—Grainger Historic District (Kinston MPS), Roughly bounded by Summit Ave., N. East St., E. & W. Vernon Ave., and N. Heritage St., Kinston, 89001764

Hotel Kinston (Kinston MPS), 503 M. Queen St., Kinston, 89001770

Kinston Baptist—White Rock Presbyterian Church (Kinston MPS), 516 Thompson St., Kinston, 89001773

Kinston Fire Station—City Hall (Kinston MPS), 118 S. Queen St., Kinston, 89001769

Mitchelltown Historic District (Kinston MPS), Roughly bounded by W. Vernon Ave., N. Heritage St., W. Blount St., College St., Atlantic Ave., and Rhem St., Kinston, 89001766

Peoples Bank Building (Kinston MPS), 242 S. Queen St., Kinston, 89001774

Queen—Gordon Streets Historic District (Kinston MPS), Roughly N. Queen and Gordon Sts., Kinston, 89001765

Trianon Historic District (Kinston MPS), Roughly E. Gordon St. from N. Tiffany to N. Orion Sts. and Water St. from N. Vance to N. Orion Sts., Kinston, 89001763

Onslow County

Bank of Onslow and Jacksonville Masonic Temple (Onslow County MPS), 214–216 Old Bridge St., Jacksonville, 89001850

Catherine Lake Historic District (Onslow County MPS), Jct. SR 1001 and 1211, Catherine Lake, 89001853

Futral Family Farm (Onslow County MPS), SR 1210, 1 mi. SE of jct. with SR 1209, Fountain vicinity, 89001851

Pelletier House and Wantland Spring (Onslow County MPS), Old Bridge St. at New River, Jacksonville, 89001852

Southwest Historic District (Onslow County MPS), NC 53 and SR 1217, Waltons Store vicinity, 89001854

OREGON

Baker County

Clark, Robert F. and Elizabeth, House, 1522 Washington Ave., Baker, 89001857

Clackamas County

Ladd Estate Company Model House, 432 Country Club Rd., Lake Oswego, 89001859

Shindler, William, House, 3235 SE. Harrison St., Milwaukie, 89001867

Coos County

Coos Bay National Bank Building, 201 Central Ave., Coos Bay, 89001868

Hood River County

Davidson—Childs House, 725 Oak St., Hood River, 89001864

Hartley, Orrin B., House, 1029 State St., Hood River, 89001860

Klamath County

Klamath Falls City Hall, 226 S. 5th St., Klamath Falls, 89001861

Klamath Falls City Library, Old, 500 Klamath Ave., Klamath Falls, 89001863

Lane County

Beta Theta Pi Fraternity House, Old, 379—381 E. 12th Ave., Eugene, 89001858

Multnomah County

Bader, Louis J., House and Garden, 3604 SE. Oak St., Portland, 89001856

MacMaster, William and Annie, House, 1041 SW. Vista Ave., Portland, 89001862

Menefee, L. B., House, 1634 SW. Myrtle St., Portland, 89001866

Miller, Henry B., House, 2439 ME. 21st St., Portland, 89001865

Shriners Hospital for Crippled Children, 8200 ME. Sandy Blvd., Portland, 89001869

PENNSYLVANIA

Berks County

Dreibelbis, Joel, Farm, PA 143, Virginville, 89001820

Huntingdon County

Greenwood Furnace (Industrial Resources of Huntingdon County, 1780—1939 MPS), PA 305 in Greenwood Furnace State Park, McAlevys Fort vicinity, 89001819

Monroe Furnace (Industrial Resources of Huntingdon County, 1780—1939 MPS), Jct. PA 26 and Legislative Rt. 31076, 6 mi. NW of McAlevys Fort, McAlevys Fort vicinity, 89001818

Lancaster County

Bowmansville Roller Mill, Jct. of PA 625 and Von Nieda St., Bowmansville, 89001821

VERMONT

Addison County

Shard Villa, Jct. Shard Villa and Columbus Smith Rds., Salisbury, 89001789

Caledonia County

Thurston, Phineas, House, Barnet Town Hwy. 12, Barnet, 89001788

Rutland County

Mountain View Stock Farm, VT 22A, N of Lake Rd., Benson, 89001817

VIRGINIA

Augusta County

Mt. Pleasant, VA 732 N of Staunton, Staunton vicinity, 89001792

Montgomery County

Alleghany Springs Springhouse (Montgomery County MPS), VA 637, Alleghany Springs, 89001807

Amiss—Palmer House (Montgomery County MPS), Mountain View Dr. and Penn St. off Eakin St., Blacksburg, 89001804

Barnett House (Montgomery County MPS), U.S. 460/11, 0.3 mi. S of jct. with VA 631, Elliston vicinity, 89001810

Barnett, William, House (Montgomery County MPS), Off VA 637, 0.1 mi. N of VA 638, Alleghany Springs vicinity, 89001806

Big Spring Baptist Church (Montgomery County MPS), VA 631, 0.1 mi. E of US 460/11, Elliston, 89001809

Bishop House (Montgomery County MPS), 0.1 mi. N of jct. of VA 693 and 613, Graysontown vicinity, 89001812

Blankenship Farm (Montgomery County MPS), 0.4 mi. S of jct. of VA 733 and 603, Ellett vicinity, 89001808

Bridge over North Fork of Roanoke River (Montgomery County MPS), S of jct. of VA 637 and 603 over North Fork of Roanoke River, Ironto vicinity, 89001802

Callaway, Pompey, House (Montgomery County MPS), VA 754, 0.2 mi. E of US 460, Elliston vicinity, 89001811

Charlton, James, Farm (Montgomery County MPS), VA 666, 1.3 mi SW of VA 724, Radford, 89001816

Crockett Springs Cottage (Montgomery County MPS), 1 mi. S of jct. of VA 637 and 609, Piedmont vicinity, 89001814

Earhart House (Montgomery County MPS), VA 723, 0.3 mi. W of VA 603, Ellett vicinity, 89001801

Gordon, Nealy, Farm (Montgomery County MPS), Off VA 637, 0.5 mi. S of jct. with VA 603, Brush Harbor vicinity, 89001805

Grayson—Gravely House (Montgomery County MPS), VA 613 at Little River Bridge, Graysontown vicinity, 89001813

Guerrant House (Montgomery County MPS), VA 612 at VA 615, Pilot, 89001815

Montgomery Primitive Baptist Church (Montgomery County MPS), VA 624, SW of jct. with US 460/11, Merrimac vicinity, 89001803

Prince Edward County

Farmville Historic District, Roughly bounded by Main, Venable, High, Ely, School, First Ave., Irving, Second Ave., Oak, W. Third St., and Mill, Farmville, 89001822

Prince William County

Davis—Beard House, 10726 Baristow Rd., Bristow, 89001794

Effingham, 14103 Aden Rd., Aden vicincity, 89001793

Lawn, The, 15027 Vint Hill Rd./VA 215, Nokesville vicinity, 89001798

Locust Botto, 2520 Logmill Rd., Haymarket vicinity, 89001796

Mt. Atlas, 4105 Mt. Atlas Ln., Haymarket vicinity, 89001799

Pilgrim's Rest, 14102 Carriage Ford Rd., Nokesville vicinity, 89001797

White House, 12320 Bristow Rd., Brentsville, 89001795

WEST VIRGINIA

Kanawha County

Edgewood Historic District, Roughly bounded by Edgewood Dr., Highland, Beech, Chester, and Lower Chester, Charleston, 89001800

St. John's Episcopal Church, 11105 Quarrier St., Charleston, 89001782

Mercer County

Hancock House, 300 Sussex St., Charleston, 89001783

Randolph County

Butcher Hill Historic District, E of Beverly, Beverly vicinity, 89001784

Wirt County

Buffalo Church, Jct. Co. Rts. 28 and 14, Palestine vicinity, 89001781

The 15-day comment period has been waived on the following property:

PENNSYLVANIA

Fayette County

Linden Hall at Saint James Park, RR 26051, NW of Dawson, Dawson vicinity, 89001787

A proposed move is being considered for the following property:

PENNSYLVANIA

Lancaster County

Stoever, John Casper, Log House, 200 W. Main St., New Holland, 86003561

[FR Doc. 89-23862 Filed 10-10-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 193X)]

Chicago and North Western Transportation Company—Abandonment Exemption—in Cook County, IL

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 3.3-mile line of railroad between milepost 9.3, near River Junction, and milepost 12.6, near Oakton Street, in Skokie, Cook County, IL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protests affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 10, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 31, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert T. Opal, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 16, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 3, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23828 Filed 10–10–89; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–43 (Sub-No. 151X)]

Illinois Central Railroad Company—Abandonment Exemption—in Adams County, MS

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon approximately 2.6 miles of railroad line between milepost 91.91 and 94.48, northeast of Natchez, in Adams County, MS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 10, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 23, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 31, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John H. Doeringer, 20180 Governors Highway, Olympia Fields, IL 60461.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 16, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 2, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–23829 Filed 10–10–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA in United States v. Browning Ferris, et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on September 27, 1989, a proposed Consent Decree in *United States* v. *Ferris Industries, et al.*, Civil Action No. B–89–859 was lodged with the United States District Court for the Eastern District of Texas.

The Complaint in this enforcement action was filed on Sept. 27, 1989, against Browning Ferris Chemical Services Inc., Chevron Chemical Company, E. I. DuPont De Nemours, French Limited, French Ltd. of Houston, Luther P. Hendon, George A. Whitten, Gulf States Utilities Company, Owens-Illinois, Inc., Phillips Petroleum Company, Sun Refining and Marketing Company, Inc., Texaco Chemical Company, and The Uniroyal Goodrich Tire Company under Sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. 9606, 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of a hazardous substance from the Bailey Waste Disposal Site located in Bridge City, Texas.

---

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning Ferris Industries et al.*, D.J. No. 90-11-2-390.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Texas, 700 North Street, Suite 102, Beaumont, Texas 77701 and the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue NW., Washington, DC 20530. In requesting a copy please enclose a check in the amount of $17.00 payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23909 Filed 10-10-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA; United States v. Jefferson Pilot Corp. et al.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9607(a), notice is hereby given that a proposed consent decree in *United States* v. *Jefferson Pilot Corporation and the City of Sanford*, Civil Action No. C-89-642-D, was lodged with the United States District Court for the Middle District of North Carolina, Durham division on September 22, 1989. This agreement resolves a judicial enforcement action brought by the United States against the defendants seeking recovery of response costs incurred by the United States in excavating a disposal pit at a former manufacturing facility in Sanford, North Carolina to remove discarded electronic capacitors that were leaking hazardous substances into the environment.

The proposed consent decree provides for recovery of response costs of $250,000 from Jefferson Pilot Corporation and $100,000 from the City of Sanford in settlement of the action.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jefferson Pilot Corporation, et al.*, D.J. Ref. 90-11-3-484.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of North Carolina, 326 Federal Bldg. & P.O. Bldg., 324 West Market Street, Greensboro, NC 27402. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section of the Department of Justice. In requesting a copy, please enclose a check in the amount of ninety (90) cents (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23910 Filed 10-10-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; U.S. v. USX Corp.

In the matter of lodging of consent decree regarding the performance of remedial activities and the recovery of certain response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 to 9675

In accordance with Department policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *USX Corporation*, was lodged with the United States District Court for New Jersey on September 19, 1989. The proposed Decree, if entered will resolve the liability of USX Corporation under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9606, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), if USX satisfactorily performs the remedial work outlined in the Decree at the Tabernacle Drum Dump Site in Tabernacle Township, Burlington County, New Jersey. The Decree will also resolve the liability of USX Corporation for certain costs which have been or will be incurred in connection with EPA's oversight of the remedial activities performed by USX Corporation as well as for costs expended to perform health studies carried out by the Agency for Toxic Substances and Disease Registry under section 104(i) of CERCLA, 42 U.S.C. 9604(i), in connection with the site. The Decree reserves the United States' right to sue USX Corporation, and any other potentially responsible parties, for other response costs not previously recovered, including without limitation, the costs incurred by the United States to perform a remedial investigation and feasibility study to monitor, assess, and evaluate releases at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Decrees. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, D.J. Ref. No. 90-11-2-138A.

The proposed Decree may be examined at the office of the United States Attorney, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, Room 311, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1647(D), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of $12.60 (10 cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23911 Filed 10-10-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; U.S. v. Borough of Bellefonte

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 2, 1989 a proposed Consent Decree in *United States* v. *Borough of Bellefonte, Pennsylvania* (M.D. Pa), Civil Action No 3:CV-89-1421

was lodged with the United States District Court for the Middle District of Pennsylvania. The Consent Decree concerns violations of sections 307(d), 309 (b), (d) and 402 of the Clean Water Act, 33 U.S.C. 1317(d), 1319 (b), (d) and 1342. Defendant Borough of Bellefonte ("Bellefonte") has violated its National Pollutant Discharge Elimination System ("NPDES") permit by consistently exceeding its permit limits for phosphorous, ammonia-nitrogen and total suspended solids at its Publicly Owned Sewage Treatment Plant ("POTW"). Also, Bellefonte has consistently failed to enforce its Pretreatment Program. The Consent Decree requires defendant to remedy these violations through upgrade and expansion of the POTW. Further, the Decree requires Bellefonte to correct the deficiencies in its Pretreatment Program by revising the Program, inspecting its significant industrial users, and submitting monitoring reports to EPA. Bellefonte is required to pay a civil penalty of $64,000 for its violations of the Clean Water Act and the Pennsylvania Clean Streams Act: $35,000 to the United States and $29,000 to the Commonwealth of Pennsylvania. The consent decree is backed by stipulated penalties and is consistent with EPA's guidelines and policies.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Borough of Bellefonte, Pennsylvania*, D.J. No. 90-5-1-1-2772.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Middle District of Pennsylvania, Federal Building, Washington and Linden Streets, Scranton, Pennsylvania 18501, and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-23912 Filed 10-10-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Departmental Management, Office of the Solicitor;

Equal Access to Justice;

1225-0013;

On occasion;

Individuals or households; State or local governments; Businesses and other for-profit; Non-profit institutions; Small Businesses or organizations;

10 respondents; 50 hours; 5 hours per response;

The Equal Access to Justice Act provides for the payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and regulations require the filing of an application.

Employment Standards Administration;

Request for Examination and/or Treatment;

1215-0066; LS-1

On occasion;

Individuals or households;

16,500 respondents; 178,200 total hours; 1.08 hours per response, 1 form

Form is used by employers to authorize medical treatment for injured workers and by physicians to report findings of physical examinations and treatment recommended.

Employment and Training Administration;

Title 29 CFR part 29—Labor Standards for the Registration of

Apprenticeship Programs;

1205-0223;

On occasion;

Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations;

Reg section	Affected public	Respondents	Frequency	Average time per response
29.3 & 29.6	92,000	Apprentices	One-time	15 minutes.
29.3 & 29.6	97,000	Apprentices	One-time	50 minutes.
29.5	3,000	Apprentices	One-time	2 hours.
29.7	40	State agencies	One-time	50 minutes.
37,086 total hours				

Needed by employers, apprentices and State apprenticeship agencies to set forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by subscribing policies and procedures concerning the registration for certain Federal purposes of acceptable apprenticeship programs.

Employment and Training Administration;

Title 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

1205–0224;

On occasion;

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations;

Reg section	Affected public	Respondents	Frequency	Average time per response
30.3	Apprentices	2,700	One-time	30 minutes.
30.4	Apprentices	300	One-time	1 hour.
30.5	Apprentices	5,000	One-time	30 minutes.
30.6	Apprentices	50	One-time	5 hours.
30.8	Apprentices	50,000	One-time	1 minute.
30.8	State agencies	30	One-time	5 minutes.
7,316 total hours				

This information is required to promote and ensure equality of opportunity with sponsors of apprenticeship programs registered with recognized State Apprenticeship Agencies.

Revision

Employment and Training Administration;

Benefits Rights and Experience;

1205–0177; ETA 218;

Quarterly;

State or local governments;

53 respondents; 106 total hours; ½ hour per response; 1 form Provides information for solvency studies, in budgeting projections and for evaluation of adequacy of benefit formals to analyses effects of proposed changes in State law.

Signed at Washington, DC this 5th day of October, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–23958 Filed 10–10–89; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–70]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Advanced Cockpit Technology.

DATES: October 30, 1989, 8:30 a.m. to 4:30 p.m. (to be held at Douglas Aircraft Company); October 31, 1989, 8 a.m. to 5 p.m. (to be held at Ames Research Center); and November 1, 1989, 8:30 a.m. to 5 p.m. (to be held at Boeing Commercial Airplane Company).

ADDRESSES: Douglas Aircraft Company, Building 75, Room 3C, 3855 Lakewood Boulevard, Long Beach, CA 90846; and National Aeronautics and Space Administration, Ames Research Center, Building 200, Room 213, Moffett Field, CA 94035; and Boeing Commercial Airplanes, Building 1060, Room 27J3, Seattle, WA 98124.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Morello, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2745.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Cockpit Technology, chaired by Mr. John K. Lauber, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

October 30, 1989

8:30 a.m.—Opening Remarks.

9 a.m.—Flight Deck Automation.

10:30 a.m.—Facility Tour.

1:30 p.m.—Advanced Programs at Douglas Aircraft.
4:30 p.m.—Adjourn.

October 31, 1989
8 a.m.—Current Research on Intelligent Cockpit Systems, and Aircrew Information Requirements.
10 a.m.—Future Research Ideas.
1 p.m.—Simulation Facility Needs.
2 p.m.—Group Discussion.
4 p.m.—Facility Tour.
5 p.m.—Adjourn.

November 1, 1989
8:30 a.m.—Opening Remarks.
9:30 a.m.—Aircraft Cockpit Requirements in the 21st Century.
1 p.m.—Discussion on Research Direction.
3 p.m.—General Discussion.
5 p.m.—Adjourn.

Dated: October 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-23914 Filed 10-10-89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89-69]

NASA Advisory Council Exploration Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council Exploration Task Force.

DATES AND TIME: October 30, 1989, 8:30 a.m. to 5 p.m.; October 31, 1989, 8:30 a.m. to 4:30 p.m.; and November 1, 1989, 9 a.m. to 1 p.m.

ADDRESS: The Gant Hotel, Conference Room A, 610 West End Street, Aspen, CO 81611.

FOR FURTHER INFORMATION CONTACT: Ms. Charlotte G. Kea, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-9182.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Exploration Task Force was established to provide strategy guidelines for a comprehensive program of human exploration of the solar system; and report to the Council the results of its study. The Task Force is chaired by Robert McC. Adams and is composed of nine members.

The meeting will be open to the public up to the seating capacity of the room, which is approximately 40 persons including Task Force Members and other participants.

Type of Meeting: Open.
Agenda:

October 30, 1989
8:30 a.m.—Introductory Remarks.
8:40 a.m.—Office of Exploration Program Status.
10:20 a.m.—General Discussion.
1 p.m.—A Geologist's Perspective on Exploring Mars.
1:30 p.m.—International Considerations.
3 p.m.—Discussion/Review of Task Force Benefits.
5 p.m.—Adjourn.

October 31, 1989
8:30 a.m.—A Biologist's Perspective on Exploring Mars.
9 a.m.—Discussion on Exploring the Moon.
9:30 a.m.—Group Discussion.
1:30 p.m.—Task Force Draft Paper Development.
4:30 p.m.—Adjourn.

November 1, 1989
9 a.m.—Discussion on Benefits of Education, Manpower, and Technology.
10 a.m.—Review of Draft Report.
12 noon—Concluding Remarks.
1 p.m.—Adjourn.

Dated: October 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-23915 Filed 10-10-89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89-71]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Communications and Information Systems Subcommittee (CISS); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Communications and Information Systems Subcommittee.

DATES: October 24, 1989, 8:30 a.m. to 5 p.m., and October 25, 1989, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue SW., Room 226 Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1510).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Communications and Information Systems Subcommittee provides technical support to the Committee and will conduct ad hoc studies and assessments. The Subcommittee will meet to review Program Status and Plans, and discuss response to the July Subcommittee Recommendations. The Subcommittee is chaired by Dr. Robert T. Filep and is composed of 7 members. The meeting will be open to the public up to the capacity of the room (approximately 12 people including members of the Subcommittee).

Type of Meeting: Open.
Agenda:

Tuesday, October 24, 1989
8:39 a.m.—Review Communications and Information Systems Program Status and Plans.
5 p.m.—Adjourn.

Wednesday, October 25, 1989
8:30 a.m.—Communication and Information Systems Response to July Subcommittee Recommendations.
11:30 a.m.—Subcommittee Wrap-Up with Director.
12:30 p.m.—Adjourn.

Dated: October 4, 1989.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-23916 Filed 10-10-89; 8:45 am]

BILLING CODE 7510-01-M

[Notice 89-68]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATE AND TIME: October 17, 1989, 8:30 a.m. to 5 p.m. and October 18, 1989, 8:30 a.m. to 2 p.m.

ADDRESSES: Capital Gallery, 600 Maryland Avenue SW. Suite 300, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–4165.

SUPPLEMENTARY INFORMATION: The Space Station Advisory Committee (SSAC) is a standing committee of the NASA Advisory Council, which advises senior management on all Agency activities. The SSAC is an interdisciplinary group charged to advise Agency management on the development, operation, and utilization of the Space Station. The committee is chaired by Mr. Laurence J. Adams and is composed of 20 members including individuals who also serve on other NASA advisory committees. This meeting will be open to the public up to the seating capacity of the room, (which is approximately 40 persons including team members and other participants). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

Type of Meeting: Open.

Agenda:

October 17, 1989

8:30 a.m.—Administrative Items.
9 a.m.—Program Update. NASA Organization. Congressional.
9:30 a.m.—Program Rephasing.
11:30 a.m.—International.
1 p.m.—Exploration Initiative.
3:30 p.m.—Discussion.
5 p.m.—Adjourn.

October 18, 1989

8:30 a.m.—Reports. Space Station Science and Applications Advisory Committee (SSSAAS). Aerospace Medicine Advisory Committee (AMAC). Systems Engineering and Integration (SE&I). Station Institution.
10 a.m.—Open Items.
2 p.m.—Adjourn.

Dated: October 2, 1989.

John Gaff,

Advisory Committee Management Officer.

[FR Doc. 89–23917 Filed 10–10–89; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Literature Advisory Panel to the National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Advancement Section) to the National Council on the Arts will be held on October 30, 1989, from 9:00 a.m.–5:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: October 4, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89–23970 Filed 10–10–89; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Chemistry; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry, NSF.

Date and Time: October 26–27, 1989; 9:00 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. K.N. Houk, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7947.

Summary Minutes: May be obtained from Dr. K.N. Houk.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open discussion of the current status and future plans of the Chemistry Division's activities.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23868 Filed 10–10–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting; Advisory Panel for Economics

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics, NSF.

Date/Time: Friday November 3, 1989—8:30 a.m. to 5:00 p.m., Saturday November 4, 1989—9:00 a.m. to 3:00 p.m.

Place: Lombardy Hotel, 2019 I St., NW.

Type of Meeting: Closed, (except for Executive Session with NSF officials on November 3, from 12:15 to 1:00).

Contact Person: Dr. Daniel H. Newlon, Dr. Lynn A. Pollnow, or Dr. Ivy Broder, Program Directors, Division of Social and Economic Science, Room 336, National Science Foundation, Washington, DC 20550, telephone (202) 357–9674.

Purpose of Meeting: To provide advice and recommendations concerning support for research in economics.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c) Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Office.

[FR Doc. 89–23869 Filed 10–10–89; 8:45 am]

BILLING CODE 7555–01–M

Meeting; Materials Research Advisory Committee

The National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee (MRAC), NSF.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Date: Thursday, November 2, and Friday, November 3, 1989.

Time: 8:30 a.m.-5:00 p.m. (Thursday), 8:30 a.m.–5:00 p.m. (Friday).

Type of Meeting: Open.

Contact Person: Dr. A. I. Schindler, Division Director, Division of Materials Research (DMR); Room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9794

Minutes: May be obtained from the Contact Person, Dr. A. I. Schindler, at the above stated address.

Purpose of Committee: To provide advice and recommendations concerning support of materials research.

Agenda:

Thursday, November 2, 1989

8:30 a.m. Introductory Remarks and Adoption of Minutes
9:00 a.m. DMR Status Reports and Budget Briefing
12:00 Noon Working Lunch
1:00 p.m. Discussion of Proposed DMR Reorganization
3:00 p.m. Discussion of Possible Responses to the NRC Materials Science and Engineering Study
5:00 p.m. Adjourn

Friday, November 3, 1989

8:30 a.m. Meeting with Acting Assistant Director, MPS
9:30 a.m. Discussion of Preliminary Conclusions of the DMR Undergraduate Curriculum Development Workshop
10:30 a.m. Discussion of Possible new DMR Initiatives
12:00 Noon Working Lunch
1:00 p.m. Statements by Departing Committee Members
2:00 p.m. Meeting with Erich Bloch, Director, NSF
3:00 p.m. Further Discussion and Future MRAC Activities
5:00 p.m. Adjourn

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89–23870 Filed 10–10–89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-263]

Northern States Power Co., Monticello Nuclear Generating Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–22 issued to Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Action

In accordance with the licensee's application for amendment dated March 31, 1989, the proposed amendment would revise the Technical Specifications to: (1) Revise the reactor vessel pressure vs. temperature (P/T) curves for consistency with Revision 2 of Regulatory Guide 1.99, "Radiation Embrittlement of Reactor Coolant Materials," (2) add requirements, consistent with Generic Letter 88–01, for augmented inservice inspection of piping susceptible to intergranular stress corrosion cracking (IGSCC); and (3) revise the requirements for the periodic Type A containment integrated leak rate test (CILRT) to permit the use of the mass point test method approved by the Commission in a recent change to 10 CFR 50, Appendix J, published in the **Federal Register** on November 15, 1988 (53 FR 45891).

The Need for the Proposed Action

The proposed amendment is needed in order to bring the requirements of the facility Technical Specifications into consistency with the current regulatory requirements of 10 CFR 50, Appendix J, and the Commission's positions of Generic Letters 88–01 and 88–11. The CILRT change is necessary to bring the Technical Specifications into consistency with current regulations and an exemption issued to the licensee on October 21, 1988.

Environmental Impacts of Proposed Action

The Commission has completed its evaluation of the proposed amendment to the Technical Specifications. The proposed amendment would implement procedural, testing and administrative changes for which the Commission has previously concluded, as demonstrated through the issuance of Regulatory Guides and an Exemption, would not increase the probability or consequences of accidents, change the types of quantities of radiological or nonradiological effluents that may be released offsite, or significant increase the individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant environmental impact.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 1, 1989 (54 FR 23553). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

The Commission has concluded that there is no measurable impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of any resources beyond the scope of resources used during normal plant operation, which have been previously considered by the Commission in the Final Environmental Statement dated November 22, 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's analysis supporting the proposed amendment. The staff did not consult with other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the application for amendment dated March 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 28th day of September 1989.

For the Nuclear Regulatory Commission.

John O. Thoma,

Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23930 Filed 10–10–89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors (GE ABWR); Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors (GE ABWR) will hold a meeting on October

31, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 31, 1989—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the NRC staff's SER on Module One of GE ABWR.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 3, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-23931 Filed 10-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-327]

Tennessee Valley Authority (Sequoyah Nuclear Plant, Unit 1); Exemptions

I

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License No. DPR-77 which authorizes operation of the Sequoyah Nuclear Plant, Unit 1. This license provides that, among other things, Unit 1 is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (Commission) now or hereafter in effect.

The Sequoyah Nuclear Plant, Unit 1, is one of the two pressurized water reactors located at the licensee's site in Hamilton County, Tennessee.

II

General Design Criterion (GDC) 52 of Appendix A to 10 CFR part 50 requires that each reactor containment be designed so that periodic integrated leakage rate testing can be conducted to assure containment isolation integrity. Section III.D.1(a) of Appendix J to 10 CFR part 50 requires (1) that a set of three Type A tests shall be performed at approximately equal intervals during each 10-year service period and (2) the third Type A test in a 10-year service period shall be conducted when the unit is shutdown for the 10-year unit inservice inspection (ISI). The staff has determined that the approximately equal intervals for Type A tests during each 10-year service period is 40±10 months.

The Type A tests are conducted to measure the primary reactor containment integrated leakage rate. They are also known as the containment integrated leak rate tests. These tests are required by Appendix J to assure that the containment leakage following a large break loss-of-coolant accident is less than the maximum allowable leak rate assumed in the accident analysis. For Unit 1, the maximum allowable leak rate is 0.25 percent of the containment volume per day.

In addition to the Type A tests, Appendix J requires Type B and Type C tests of leakage through containment penetrations and containment isolation valves to also assure containment integrity during an accident. These requested exemptions do not affect the requirements on (1) the Type B and Type C tests in Appendix J or (2) the maximum allowed containment leakage rate in Appendix J and the Unit 1 Technical Specifications.

The containment is required to be operable when the unit is at reactor system conditions above cold shutdown and refueling. The containment is not required for cold shutdown or refueling.

By letter dated May 1, 1989, the licensee requested a temporary exemption from the interval requirements for Type A testing in Appendix J. The licensee proposed that the interval between the second and third Type A tests for Unit 1 be extended on a one-time basis beyond the 50 months allowed to coincide with the Unit 1 Cycle 4 refueling outage. This one-time extension would require that Unit 1 shutdown no later than May 1, 1990 and that the Type A test would be completed before the restart of Unit 1 from its Cycle 4 refueling outage when containment integrity was again required. The licensee contends that an exemption for Unit 1 is warranted on the basis that the containment will have experienced no operational loading for 35 of the 53 months to May 1, 1990 since the last Type A test, no modifications have been made to the containment boundary since the last type A test, the first and second Type A tests had very leakage rates, and the likely leakage paths, the containment penetrations, have recently been acceptably leak tested.

Unit 1 entered its Cycle 3 refueling outage on August 22, 1985 and the second test of the first 10-year service period was conducted on December 15, 1985. The second test was significantly less than the maximum allowable leak rate of 0.25 percent per day for Unit 1. TVA stated that since August 22, 1985 Unit 1 was in an extnded shutdown until its restart in November 1988 and no modifications were made on the containment pressure boundary. In addition, the local leak tests on all penetrations and valves requiring Appendix J, Type B and Type C testing were conducted in 1988 before the restart of Unit 1 in November 1988 and are acceptable. The surfaces on the containment liner and shield building were inspected for abnormal degradation before the restart of Unit 1 and none was found. Therefore, the leak rate for the Unit 1 containment should remain within the maximum allowed leak rate in the not more than three months of additional plant operation before the shutdown of Unit 1 for the Unit 1 Cycle 4 refueling outage to conduct the third Type A test.

The staff has considered the temporary Appendix J exemption request for the extension of the Type A test interval and concludes it is justified on the grounds that (1) there should be no significant increase in the Type A test leak rate for the Unit 1 containment when the Type A test interval is extended beyond the 50 months allowed to the Unit 1 Cycle 4 refueling outage which is to begin no later than May 1, 1990 and (2) the results of this Type A test should be below the maximum allowed leak rate.

By letter dated May 5, 1989, the licensee requested a second exemption

from the Type A testing requirements in Appendix J. This is a permanent exemption from conducting the third Type A test in a 10-year service period during the unit shutdown for the 10-year inservice inspection (ISI). The licensee contends that since the 10-year ISI has been extended approximately three years, the inspection is not required for the Unit 1 Cycle 4 refueling outage and, therefore, must be uncoupled from the Third Type A test in each 10-year service period which is required by Appendix J.

The 10-year ISI is not related to the integrity of the containment pressure boundary and is scheduled for 1994 in accordance with Section XI of the American Society of Mechanical Engineers (ASME) Code and with 10 CFR 50.55a(g)(4). The first 10-year ISI for Unit 1 is, therefore, scheduled for a future refueling outage other than the upcoming Unit 1 Cycle 4 refueling outage which is scheduled for 1990. The extension of the 10-year ISI is necessary in order for the plant to accumulate sufficient operating time to conduct the 10-year ISI because of the extended 35-month outage of Unit 1 from 1985 to 1988. In accordance with the provisions of Section XI, Article I WA-2400(c), of the ASME Code, the licensee extended the Sequoyah Unit 1 10-year ISI by 34 months to 1994. The ASME Code allows the 10-year ISI to be postponed if the time the plant has operated is significantly less than the 10-year inspection cycle which is true for Sequoyah because of its extended outage.

The staff has considered the Appendix J exemption request for uncoupling the third Type A test of each 10-year service period from the 10-year unit ISI and concludes it is justified on the grounds that the third Type A test within each 10-year service period and the 10-year ISI must be scheduled separately for Unit 1. The licensee is still required to conduct the 10-year ISI in accordance with Section XI of the ASME Code.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are (1) authorized by law, (2) will not present an undue risk to public health and safety, and are (3) consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption—namely, that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the Unit 1 containment will continue to provide a reliable and acceptable means of containment isolation integrity within the leakage requirements of Appendix J and the Unit 1 Technical Specifications. Also, compliance with the rule would result in the expenditure of resources which are not consistent with the licensee's long-term plan for Unit 1 and which could be better utilized elsewhere for safety improvements to the plant.

Unit 1 entered its Cycle 3 refueling outage on August 22, 1985, and successfully completed its second periodic Type A test on December 15, 1985. Unit 1 remained in shutdown for approximately three years before returning to power operation on November 10, 1988. This unusually long outage has resulted in a hardship for the licensee to comply with the Type A test interval requirement in Appendix J. Compliance with Appendix J requires the licensee to either schedule a forced Unit 1 outage for the sole purpose of performing a Type A test or conduct a Type A test during the ice condenser flow passage inspection outage projected to start on October 1, 1989. A forced outage would require 22 days to conduct the Type A test and the estimated cost to the licensee is $2.5 million in replacement power costs. Inclusion of a Type A test during the ice condenser flow passage inspection (eight-day duration) would add an additional 22 days to the outage and the replacement power costs would be the same.

When Appendix J was adopted, the end of the 10-year service period and the 10-year inservice inspection outage were contemplated to be concurrent milestones; however, these milestones are unrelated within the meaning of containment integrity and Appendix J would require that the Unit 1 10-year ISI would have to be rescheduled to coincide with the Unit 1 Cycle 4 refueling outage. This option would result in significant excess costs to the licensee because of the increased outage time. The 10-year inservice inspection for Unit 1 is currently scheduled for 1994 in accordance with Section XI of the ASME Code and 10 CFR 50.55a(g)(4) and early performance of the 10-year ISI with the associated hardships and cost was not intended by the rule when it was originally adopted. Performing the 10-year ISI early would also provide little or no compensating increase in the level of quality or safety at Unit 1.

Accordingly, the Commission hereby grants two exemptions from the requirements of Section III.D.1(a) of Appendix J to 10 CFR Part 50 to the licensee for operation of the Sequoyah Nuclear Plant, Unit 1, as described above. The exemption to uncouple the third Type A test of each 10-year service period from the 10-year inservice inspection is granted permanently. The exemption to allow the licensee to conduct the third Type A test for Unit 1 during the Unit 1 Cycle 4 refueling outage is temporary and is granted only for this third Type A test provided:

(1) The Unit 1 Cycle 4 refueling outage begins no later than May 1, 1990, and

(2) The Type A test for Unit 1 is conducted prior to the restart of Unit 1 from its Cycle 4 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of these exemptions will have no significant impact on the environment. This was noticed in the **Federal Register** (54 FR 39829, September 28, 1989).

For further details with respect to this action, see the requests for exemptions dated May 1, and 5, 1989, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of September 1989.

For the Nuclear Regulatory Commission.

B. D. Liaw,

Director, TVA Projects Division, Office of Nuclear Reactor Regulation.

[FR Doc. 89-23932 Filed 10-10-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) has denied in part a request by the Washington Public Power Supply System (WPPSS or licensee) for an amendment to Facility Operating License No. NPF-21 for operation of the WPPSS Nuclear Project No. 2, located in Benton County, Washington. The Notice of Consideration of Issuance of Amendment was published in the **Federal Register** on November 30, 1988 (53 FR 48340).

The licensee proposed to amend the technical specifications related to radiation monitoring of control room

ventilation air to remove the requirement for an automated trip of air intakes upon a high radiation signal. Arguments were presented to support this action; and it was reviewed and approved.

In the same application, several other changes to the affected section were proposed but were not supported. Specifically, NRC staff did not review the footnote which was proposed to be added to page 3/4 3–58 or review the proposed changes to statement 70 on page 3/4 3–59 specifying times to restore the monitors to operable status because the licensee did not (1) indicate any need for the changes, (2) present a safety analysis, instead arguing that the proposed wording would be consistent with wording used in unrelated sections of the technical specifications, or (3) provide a "no significant hazards consideration analysis" addressing these changes. Therefore, these proposed changes have been denied.

By November 9, 1989, the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Regulatory Publications Branch, Office of Administration, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005–3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorneys for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 24, 1988 (2) Amendment No. 74 to License No. NPF–21, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 3rd day of October, 1989.

For the Nuclear Regulatory Commission.

Robert B. Samworth,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89–23933 Filed 10–10–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Public Access to the Federal Information Locator System

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is announcing public access to the Federal Information Locator System (FILS). OMB is making available a document composed of an indexed summary of data on collections of information from the public for which individual Federal agencies have sought and received prior approval from OMB, as required by the Paperwork Reducation Act. FILS can serve as a guide for identifying sources of information within the Federal government on subject areas of interest to researchers or other users of information.

FOR FURTHER INFORMATION CONTACT: Joseph F. Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, D.C. 20503. Telephone: (202) 395–7316.

SUPPLEMENTARY INFORMATION:

Background

The Paperwork Reduction Act requires the establishment and operation of FILS to serve as an authoritative register of all collections of information sponsored by Federal agencies (44 U.S.C. 3511). One of the purposes of FILS is to assist the public, as well as individual Federal agencies, in locating existing government sources of information. OMB Circular No. A–130, Management of Federal Information Resources requires that agencies provide adequate public notice when initiating significant information products. This notice is issued pursuant to that policy.

Construction of FILS

Under the Paperwork Reduction Act, agencies proposing to collect information from the public are required to obtain approval from OMB prior to conducting such an activity. In the case of ongoing information collections, such as applications for benefits, OMB approval is required at least once every three years. As part of the process of obtaining OMB approval, agencies submit information to OMB describing the nature of the data collection, the respondents to the collection, and the paperwork burden imposed on the public. Some of this information is stored in a computerized database designed for internal OMB use to keep track of agency requests and OMB approvals. FILS is generated from that database.

FILS contains the following information about each information collection in the database:

—An eight-digit OMB approval number;
—Title of the information collection;
—Name of sponsoring department/agency;
—Affected public (i.e., individuals or households, State or local government, farms, businesses non-profit institutions);
—Purpose (i.e., application for benefits, program evaluation, general purpose statistics, regulatory or compliance, program planning or management, research, audit);
—Frequency (i.e., on occasion, weekly, monthly, annually, biennially, other);
—Number of respondents;
—Total hours of burden imposed on the public;
—Keywords; and
—Abstract describing the data collection.

Organization of FILS Data File Document

The FILS data file document is comprised of several section. The first section is a textual introduction explaining the background of the data file and containing much of the information in this Notice. Following the introduction, the user will find the main body of the FILS data file—a sequential listing (by OMB approval number) of currently approved data collections. Next, the user will find an index of "keywords" in alphabetical order. The index is followed by a table of agency codes for each Federal agency. (These codes are used as the first four digits of the eight-digit OMB approval number assigned to each information collection.) The last section of the file contains the names, addresses and telephone

numbers of Federal agency officials the public may contact for further details regarding particular information collections, including requests for copies of specific form or reports of results.

Public Access

OMB is enabling public access to FILS in several ways:

(1) The Government Printing Office is distributing the FILS data file document through the Federal Despository Library program. Under this program microfiche of the document will be available for free public use in approximately 525 libraries located thoughout the country.

(2) Copies of the FILS data file document may be purchased from the Department of Commerce's National technical Information Service (NTIS). It may be purchased from NTIS in paper, microfiche or diskette format for: $91.50 in paper, $25.50 in microfiche, and $275.00 in IBM PS2 diskette format. The NTIS document numbers for these formats are PB89-221808 for paper or microfiche and PB89-211816 for diskettes. The document may be ordered from NTIS by calling the NTIS sales desk at (703) 487-4650 or by writing to National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161.

(3) The FILS data file document may be used without charge by the public at the Office of Management and Budget in Washington, DC by calling the Office of Information and Regulatory Affairs Docket Library at (202) 395-6880.

S. Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89-24080 Filed 10-10-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27330; File No. SR-MSRB-89-5]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting Assessment Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 28, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Board has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A) of the Act which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Board is filing herewith a proposed amendment to rule A-13 increasing the underwriting assessment fee from $.01 to $.02 per $1,000 par value for all new issue municipal securities sold on or after October 1, 1989, having an aggregate par value of $1,000,000 or more and a maturity date of not less than two years from the date of the securities (hereinafter referred to as the "proposed rule change"). The revised fee will take effect on October 1, 1989, to ensure that the industry receives ample notification of the revision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule A-13 requires each broker, dealer, and municipal securities dealer to pay to the Board a fee based on its placements of new issue municipal securities. The purpose of the fee is to provide a continuing source of revenue to defray the costs and expenses of operating the Board and administering its activities. Brokers, dealers, and municipal securities dealers are required to pay the underwriting assessment fee on all new issues purchased by or through them which have an aggregate par value of $1,000,000 or more and a final stated maturity of not less than two years from the date of the securities. Prior to the proposed rule change, the fee was calculated at the rate of $.01 per $1,000 of the par value of such securities. The proposed rule change modifies rule A-13 to provide that the fee payable with respect to new issues which a municipal securities dealer has contracted on or after October 1, 1989 to purchase from an issuer shall be calculated at the rate of $.02 per $1,000.

The Board has not changed the underwriting assessment fee rate since the rate was decreased from $.02 to $.01 per $1,000 on July 1, 1987. In light of the Board's declining fund balance and the expected expenses relating to the development of an electronic repository for official statements and refunding documents, it has adopted an amendment to rule A-13 increasing the underwriting assessment fee rate from $.01 to $.02 per $1,000, effective October 1, 1989.

(b) The Board has adopted the proposed rule change pursuant to sections 15B(b)(2)(I) and 15B(b)(2)(J) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(J) of the Act authorizes and directs the Board to adopt rules providing for the assessment of brokers, dealers, and municipal securities dealers to defray the costs and expenses of operating and administering the Board. Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change, which will have an equal impact on all participants in the municipal securities industry, will have any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Particpants, or Others

Comments have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary of appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-MSRB-89-5 and should be submitted by November 1, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 3, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23872 Filed 10-10-89; 8:45 am]

BILLING CODE 8010-11-M

[Release No. 34-27321; File No. SR-NASD-89-43]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Limit Order Capabilities for the Association's Small Order Execution System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 27, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would extend until November 30, 1989 the Securities and Exchange Commission's temporary approval of the limit order capabilities of the Association's Small Order Execution System which was approved for a ninety day period on January 19, 1989, and extended until September 30, 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to extend the Commission's temporary approval of the SOES limit order system until November 30, 1989. This extension will allow the NASD to continue to monitor utilization of the system and will provide an opportunity for the NASD to address concerns as to the operation of the system raised by the Commission in the temporary approval order [1] relating to possible crossing or matching of limit orders resident in the system and to provide the Commission with a definite proposal relating to this issue. To date, the system has been functioning as anticipated. As of March 20, 1989, the NASD completed the phase in of all securities and the system is currently carrying approximately 1,250 open limit orders. The NASD has experienced no system related problems and no capacity problems during the implementation phase of the SOES limit order file.

The statutory basis for the further development and implementation of SOES is found in sections 11A(a)(1)(B) and (C)(i), 15A(b)(6) and 17A(a)(1) (B) and (C) of the Securities Exchange Act of 1934. Sections 11A(a)(1) (B) and (C)(i) set forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Sections 17A(a)(1) (B) and (C) set forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the modifications to SOES will further these ends by providing enhanced mechanisms for the efficient and economic execution and clearance of limit orders in over-the-counter securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received with respect to the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change on a temporary basis prior to the thirtieth day after publication in the **Federal Register** and in any event before September 30, 1989 the date on which the temporary approval for the SOES Limit Order processing function expires. The Association believes that the enhancement to the SOES system is benefitting members and their public customers by providing an automated method of processing limit orders for all SOES participants. The NASD believes that the extension will provide the NASD with the opportunity to consider concerns relating to matching of orders at prices between the spread which were raised in the Commission's temporary approval order.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and, in particular, the requirements of sections 11A(a)(1)(B), 15A(b)(5) and 17A(a)(1) (B) and (C) and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof in that accelerated approval will benefit public investors by continuing to provide limit order storage and execution capabilities which can result in more efficient handling of customer orders. The Commission believes that the benefits of extending the temporary rule change until November 30, 1989 outweigh any potential adverse effects

[1] Securities Exchange Act Release No. 26476 (January 19, 1989), 54 FR 3881

during the period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communciations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submission should refer to the file number in the caption above and should be submitted by November 1, 1989.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-23873 Filed 10-10-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27324; File No. SR-NSCC-89-13]

Self-Regulatory Organizations; National Securities Clearing Corp.; Order Granting Accelerated Approval and Approving a Proposed Rule Change on a Temporary Basis Concerning the Automated Settlement of Mutual Fund Dividends

The National Securities Clearing Corporation ("NSCC"), on August 14, 1989, filed a proposed rule change with the Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] The rule change would modify the Networking aspect of NSCC's Fund/Serv to provide for the automated settlement of mutual fund dividends. Notice of this proposal was published in the **Federal Register** on September 8, 1989, to solicit comments from interested persons.[2] No comments were received. This order approves the proposal on a temporary basis.

I. Description of the Proposal

The rule change would amend NSCC's Rule 52, section 17 (captioned "Networking").[3] Rule 17 currently authroizes NSCC's broker-dealer and Fund members to use Networking for the transmission between themselves of mutual fund customer account data. NSCC notes that Networking's initial phase has provided NSCC members with a centralized data communications system for the exchange of customer information and securities positions.[4]

The proposed amendments to Rule 17 (which NSCC terms Networking's "second phase") will provide for the automated settlement of cash dividends paid by mutual funds for share positions maintained in Networking accounts. While dividend information on mutual funds currently is passed through Networking, the actual payment of the mutual fund distributions still occurs directly between the Fund member and each broker that holds units of the mutual fund. The proposed rule change will enable a Fund member to make only one distribution payment to NSCC, which then will be distributed via Networking to the brokers.[5]

Under the proposal, NSCC will provide broker-dealer and Fund members using Networking a new file termed the Networking Settlement Summary File ("Summary File"). The Summary File will consist of two sub-files: (1) The Networking Settlement Summary Detail Output Record ("Output Record"), and (2) the Networking Settlement Summary Trailer Record ("Trailer Record").

The Output Record will detail on a daily basis for each Fund member and each broker as of the day before a distribution's payable date ("Payable-1"): (1) The payable and settlement dates,[6] (2) the settlement amounts, and (3) all dividend updates (*i.e.*, additions and corrections) up to and including Payable-1. The Trailer Record will detail the identical information on a daily basis as of settlement date. NSCC will make the Summary File available at approxiamtely 11:00 a.m. (EST) daily.

Fund members must pay their cash dividend settlement figures in same-day funds, via Fedwire,[7] no later that 1:00 p.m. (EST) on the payable date. NSCC will pay its broker members in next-day funds at approximately 3:00 p.m. Inasmuch as NSCC will be paid in same-day funds but will pay its members in next-day funds, it will credit its broker members with interest earned on those funds.

The Fund members' dividend payments will constitute independent obligations. Accordingly, they ordinarily will not be netted with the Fund members' other settlement balances. If, however, as a result of Networking dividend corrections and reversals, a Fund member's settlement figure results in a credit balance, NSCC will repay the balance in next-day funds.[8]

II. NSCC's Rationale for the Proposal

NSCC states that the proposed rule change would be consistent with section 17A of the Act inasmuch as automating the settlement of mutual fund dividends would promote the prompt and accurate clearance and settlement of securities transactions.

III. Discussion

The Commission believes that the proposal is consistent with the Act. The Commission notes, moreover, that section 17A(a)(1) of the Act expressly encourages the use of automated systems to make the processing of

---

[1] 15 U.S.C. 78s(b) (1982).

[2] *See* Securities Exchange Act Release No. 27199 (August 30, 1989), 54 FR 37395.

[3] "Networking" is an NSCC service, provided on a subscription basis, that permits automated transmission of mutual fund data between NSCC members and Fund/Serv. *See* Securities Exchange Act Release No. 26376 (December 20, 1988), 53 FR 52544 [File No. SR-NSCC-88-08].

"Fund/Serv"is a more basic NSCC mutual fund service. Participating mutual funds are known as "Fund members." The service is available to all NSCC broker-dealer members for subscription and service fees. The acronym "Serv" of Fund/Serv refers to the services of mutual fund "settlement, entry, and registration verification," services which, among others, are provided by NSCC to the Subscribing members. *See, e.g.*, Securities Exchange Act Release Nos. 26377 (December 20, 1988, 53 FR 52546; 24088 (December 20, 1988, 53 FR 52546; 24088 (February 10, 1988), 52 FR 5228 [File Nos. SR-NSCC-87-12, SR-NSCC-86-05]

[4] *See* NSCC Important Notice No. A3232, dated August 15, 1989.

[5] NSCC states in its filing that a valid payable date for this purpose will be defined as a date on which New York banks are open for business.

[6] Under the proposal, payable dates and settlement dates ordinarily will be the same. But a Fund member could report its dividend payable information after the payable date. In that case, the settlement date would be the date on which the information was reported. *See* NSCC's Important Notice No. A3232, dated August 10, 1989.

[7] "Fedwire" is an acronym for the Federal Reserve System wire facility which provides a system for transferring funds among all 12 Federal Reserve Banks, their 24 branches, the Federal Reserve offices in Washington, D.C. and Chicago, and the Commercial Credit Corporation. *See* Division of Market Regulation, Securities and Exchange Commission, *The October 1987 Market Break,* at 1-12 (1988).

[8] NSCC notes in its filing that the dividend payments will not be a guaranteed service. If NSCC were to credit a broker with a dividend and not receive the corresponding debit from the Fund member, the credit would be subject to reversal.

securities transactions more prompt and more efficient.

The Commission understands that the implementation of this proposal will permit the automated settlement of mutual fund distributions. That is, for a mutual fund participating in NSCC's Fund/Serv, dividend payments to many broker-dealers can be reduced to only one dividend payment to a clearing agency, NSCC, and NSCC would then distribute the dividends to the brokers via its Networking system in next-day funds.

In order to assess the benefits, costs and risks associated with this service, the Commission is approving the proposal on a temporary basis for three months. Within 60 days from the date of this order, NSCC has represented that it will provide a report setting forth: (1) The number of dividends paid through the service, (2) the dollar amounts paid, (3) the number and value of payments that are not received by 1:00 p.m.; and (4) the time and date when such payments are received.

The Commission finds good cause under section 19(b)(2) of the Act for approving this proposal on a temporary accelerated basis prior to the statutory thirtieth day after the notice of the filing in the **Federal Register**. This is because NSCC has represented to the Commission that its Fund members have equipment in place, have administered training, and are scheduled to commence operations with the new system on Friday, September 29, 1989, and that, accordingly, it would be burdensome to require them to stand down and renew their phase-in operations at a later time.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR–NSCC–89–13) be, and hereby is, approved on a temporary basis through December 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 29, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–23948 Filed 10–10–89; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The interest rate of section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97–35) and the SBA share of immediate participation loans is nine (9) percent for the fiscal quarter beginning October 1, 1989.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–1 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of 1989, this rate will be eight-and-one-eighth (8⅛).

Charles R. Hertzberg,

Acting Associate Administrator for Finance and Investment.

[FR Doc. 89–23899 Filed 10–10–89; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Nos. 301–26 and 301–71]

Termination of Section 302 Investigations; Compliance with Trade Agreement Obligations by the European Community with Respect to Processing Subsidies on Canned Fruit

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigations under section 302 of the Trade Act of 1974, as amended.

SUMMARY: The United States Trade Representative (USTR) has decided to terminate two investigations initiated under section 302 of the Trade Act of 1974 as amended (Trade Act) with respect to processing subsidies granted by the European Community (EC) on canned fruit, having reached a satisfactory resolution of the issues under investigation.

DATES: These investigations are terminated effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Laura Anderson, Director, European Community Affairs, USTR, (202) 395–3074.

SUPPLEMENTARY INFORMATION: On December 10, 1981, in response to a petition filed by the California Cling Peach Advisory Board and others, the USTR initiated an investigation on certain subsidy practices of the European Community with respect to production of canned fruit (Docket No. 301–26, 46 FR 61358). After consultations under the General Agreement on Tariffs and Trade (GATT) on February 25, 1982, the United States requested a GATT dispute settlement panel on March 31, 1982. On August 17, 1982, the President directed USTR to expedite dispute settlement (47 FR 36403).

After several GATT panel meetings and report revisions, a final panel report favorable to the United States was issued on July 20, 1984. The panel found that the production aids granted to processors of canned fruit nullified and impaired tariff concessions granted by the EC on those products, and the panel suggested that the EC restore the competitive relationship between imported U.S. and domestic EC canned fruit. The United States requested adoption of the panel report in GATT Council meetings of April 30, May 29, June 4 and July 16, 1985, but Council action was deferred because the EC was not prepared to accept adoption of the report.

On September 7, 1985, the President directed USTR to recommend section 301 retaliation unless this case was resolved by December 1, 1985. On November 30, 1985, the U.S. and the EC reached a settlement under which, in addition to subsidy reductions already implemented on canned pears, the EC agreed to eliminate the canning element of its processing subsidies for canned peaches. USTR closely monitored implementation of this agreement from 1986–1988.

In August 1988, the United States informed the EC Commission that new subsidy levels implemented in July 1988 exceeded allowable levels under the agreement. Since October 1988 USTR had been consulting with the EC regarding both the new subsidy levels and the methodology for calculation of its subsides, but the EC continued to subsidize at levels which are inconsistent with the agreement.

Pursuant to section 302(b)(1)(A) of the Trade Act, the USTR determined on May 8, 1989, that an investigation under section 302 should be initiated with respect to the EC policy and practice in this matter, in order to determine whether it was actionable under section 301 (54 FR 20219). A public hearing regarding this matter was held June 9, 1989, where testimony of interested persons was heard.

Consultations with the EC on this matter resulted in a resolution that includes three elements. First, beginning July 1, 1989, the EC lowered its 1989/90 subsidy rates for canned peaches and pears to comply with the terms of the

1985 Canned Fruit Agreement. Second, U.S. and EC officials clarified their interpretation of that Agreement to forestall future disputes. Finally, the EC Commission has modified its regulations to limit canned peach and pear subsides in future years.

In accordance with the GATT panel report, the Trade Representative determined pursuant to section 304 of the Trade Act that rights of the United States under the GATT were being denied by EC processing subsidies, but the Trade Representative has determined, under section 301(a)(2), that the EC is taking satisfactory measures to grant the rights of the United States under the GATT. Accordingly, the two investigations arising from the EC practices with respect to canned fruit production subsidies are terminated.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-23935 Filed 10-10-89; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-38]

Petition for Exemption, Summary, and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 31, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part II of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 3, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel

Petitions for Exemption

Docket No.: 25276
Petitioner: Crew Pilot Training
Sections of the FAR Affected: 14 CFR 61.63(d) (2) and (3) and 61.157(d) (1) and (2), and portions of Appendix A of Part 61
Description of Relief Sought: To extend Exemption No. 5011 that allows petitioner to use the FAA-approved visual simulators to meet certain training and testing requirements of the Federal Aviation Regulations

Docket No.: 25898
Petitioner: John H. Bell
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to continue service as a check pilot past his 60th birthday.

Docket No.: 25967
Petitioner: Judith A. Myers
Sections of the FAR Affected: 14 CFR 61.129(b)(ii)
Description of the Relief Sought: To allow petitioner to work toward her commercial rating while flying her husband to business appointments in her own airplane, one not equipped with retractable gear as specified in the Federal Aviation Regulations.

Docket No.: 25993
Petitioners: Frederick W. Arndt, et al.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioners to work beyond age 60 as airline pilots in operations under Part 121.

Docket No.: 25757
Petitioner: Skywing Flight Training
Regulations Affected: 14 CFR 141.65
Description of Relief Sought/ Disposition: To allow petitioner to exercise examining authority for flight instruction and air transport pilot written tests. *DENIAL, September 20, 1989, Exemption No. 5102.*

Docket Nos.: 25835, 25871, 25872, 25906, 25911
Petitioners: Rhoades Aviation, Inc.; Amerijet International, Inc.; Renown Aviation, Inc.; Lincoln Airlines, Inc.; Braniff, Inc.
Regulations Affected: 14 CFR 121.343(b)
Description of Relief Sought/ Disposition: To extend Exemption No. 5051 for a maximum of 90 days after the September 26, 1989, termination date of the exemption. Exemption No. 5051 permits the operation of airplanes without complying with the flight data recorder requirements. *GRANT, September 26, 1989, Exemption No. 5051A.*

Docket No.: 25876
Petitioner: Stephen A. Micks
Regulations Affected: 14 CFR 61.39(a)(1)
Description of Relief Sought/ Disposition: To relieve the petitioner of the requirement to pass the written test since the beginning of the 24th month before the month in which the flight test was taken. *DENIAL, September 27, 1989, Exemption No. 5103.*

[FR Doc. 89-23919 Filed 10-10-89; 8:45 am]

BILLING CODE 4910-13-M

Proposed Advisory Circular 121.XX on Flightcrew Sleeping Quarters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 121.XX, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed AC pertaining to adequate flightcrew sleeping quarters on aircraft. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before December 11, 1989.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Aircraft Evaluation Group (AEG) Standards Staff, ANM-271, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy M. Golder, ANM-271, at the address above, telephone (206) 431-2273.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 121.XX and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Aircraft Evaluation Group Standards Staff before issuing the final AC.

Background

The proposed AC sets forth acceptable means of compliance with the requirement for adequate flightcrew sleeping quarters of §§ 121.485(a) and 121.523(b) of the Federal Aviation Regulations. With the advent of longer range turbojet transport airplanes, not only three- and four-engine airplanes but also two-engine airplanes as well, the requirement for adequate sleeping facilities for flight crewmembers on board the airplane needs to be addressed. Based on current available data, the guidance set forth in this advisory circular provides an adequate and favorable environment that would enable sleep to occur and provide reasonable assurance that relief crewmembers will be rested and alert when their duty time begins. The Federal Aviation Administration and the National Air and Space Agency are continuing studies of the human factors associated with flightcrew sleeping quarters. Criteria established as a result of these studies will be incorporated into later Advisory Circular revisions.

Issued in Washington, DC, on September 11, 1989.

Raymond E. Ramakis,

Acting Director, Flight Standards Service.

[FR Doc. 89-23920 Filed 10-10-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives in the Office of the Assistant Commissioner (Inspection) are as follows:

Michael J. Murphy, Senior Deputy Commissioner, Chairperson

Robert P. Cesca, Deputy Inspector General, Department of the Treasury

Peter K. Scott, Deputy Chief Counsel

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive Appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-23856 Filed 10-10-89; 8:45 am]

BILLING CODE 4830-01-M

Performance Review Board

AGENCY: Internal Revenue Service.

ACTION: Notice of Members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective October 1, 1989.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, Room 3515, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566-4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for Assistant Commissioners, Regional Commissioners and senior executives in the Office of the Commissioner are as follows:

Teddy R. Kern, Assistant Commissioner (Inspection)

Charles H. Brennan, Deputy Commissioner (Operations)

Peter K. Scott, Deputy Chief Counsel

Richard J. Mihelcic, Associate Chief Counsel (Finance and Management)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43FR 52122).

Frederick T. Goldberg, Jr.,

Commissioner.

[FR Doc. 89-23857 Filed 10-10-89; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[No. 89-245]

Addition of Senior Executive Officer or Director

Date: October 2, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The public is advised that the Office of Thrift Supervision has submitted a request for a new information collection entitled "Notice of Addition of Senior Executive Officer or Director," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

The information collected enables the Office of Thrift Supervision to comply with the requirements of Section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The information will be used to evaluate an individual's competence, experience, character or integrity in order to make the necessary determination of agency disapproval required by Section 914. We estimate it will take approximately 2 hours per respondent to complete the information collection.

DATE: Comments on the information collection request are welcome and should be received on or before October 23, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Office of Thrift Supervision.

The Office of Thrift Supervision would appreciate commenters sending copies of their comments to the information contact provided below.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Office of Thrift Supervision address given below: Director, Information Service Division, Communications Service, Office of Thrift Supervision, 1700 G. Street, NW. Washington, DC 20552, Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT:
Kathleen O. Willard, (202) 906–6789, Office of Thrift Supervision, 1700 G. Street NW., Washington, DC 20552.

By The Office of Thrift Supervision.
M. Danny Wall,
Director.

[FR Doc. 89–23934 Filed 10–10–89; 8:45 am]
BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 5, 1989.

TIME AND DATE: 10:00 a.m., Thursday, October 5, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission will consider and act upon the following:

2. *Clinchfield Coal Company v. Secretary of Labor and United Mine Workers of America*, Docket No. VA 89-67-R. (Issues include consideration of petitions for discretionary review.)

It was determined by a unanimous vote of Commissioners that a closed meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629/(202) 708-9300 for TDD Relay 800-877-8339 for Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-24075 Filed 10-6-89; 1:38 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

TIME AND DATE: 11:00 a.m., Monday, October 16, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 89-24105 Filed 10-10-89; 8:45 am]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

[USITC SE-88-33]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 39496—dated September 26, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Thursday, October 5, 1989.

ADDITIONAL MEETING SCHEDULED FOR: 10:00 a.m., Friday, October 6, 1989.

Notice is given that the Commission meeting previously announced for Thursday, October 5, 1989, was recessed and an additional meeting will take place on Friday, October 6, 1989. In conformity with 19 CFR 201.37(b), Commissioners Brunsdale, Eckes, Rohr, Cass, and Newquist voted to reschedule the meeting. Commissioner Lodwick disapproved. It was affirmed that no earlier announcement of the additional meeting was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000

Dated: October 5, 1989

Kenneth R. Mason,

Secretary

[FR Doc. 89-24102 Filed 10-6-89; 2:58 p.m.]

BILLING CODE 7020-02-M

Corrections

Federal Register
Vol. 54, No. 195
Wednesday, October 11, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1765

Telephone Materials, Equipment, and Construction - Telephone Program

Correction

In rule document 89-22282 beginning on page 39262 in the issue of Monday, September 25, 1989, make the following correction:

On page 39280, in the signature block, the title should read "Acting Administrator".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

Correction

In rule document 89-22158 beginning on page 38645 in the issue of Wednesday, September 20, 1989, make the following correction:

On page 38646, in the first column, in the signature line, the title should read,"Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-19]

Proposed Alteration of VOR Federal Airways; Texas

Correction

In proposed rule document 89-20852 beginning on page 36997 in the issue of Wednesday, September 6, 1989, make the following correction:

§ 71.123 [Corrected]

On page 36998, in the second column, under **§ 71.123 [Amended]**, the heading **V-575 [Amended]** should read **V-574 [Amended]**.

BILLING CODE 1505-01-D

federal register

Wednesday
October 11, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405 et al.

Medicare; Secondary Payer and Recovery Against Third Parties; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 411, 412 and 489

[BPD-302-F; RIN 0938-AC05]

Medicare as Secondary Payer and Medicare Recovery Against Third Parties

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These rules—

1. Update and revise policies dealing with Medicare as secondary payer;
2. Revise policy on the exclusion of services of immediate relatives of the beneficiary or members of the beneficiary's household;
3. Revise policy on the exclusion of services furnished outside the United States;
4. Clarify policy on the "no legal obligation to pay" exclusion as it applies to services furnished to prisoners; and
5. Reflect a recent statutory amendment that provides an additional exception to the exclusion of services that are "not reasonable and necessary".

The changes in the Medicare secondary payer provisions reflect amendments made to section 1862(b) of the Social Security Act (the Act) by section 2344 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), section 9201 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), and section 4036(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203). Separate regulations will be issued to implement section 9319 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), which made Medicare secondary payer for certain disabled Medicare beneficiaries under age 65 who are covered under a large group health plan.

EFFECTIVE DATE: These rules are effective November 13, 1989.

FOR FURTHER INFORMATION, CONTACT:

Herbert Shankroff, (301) 966–7171; Identification and billing of other primary payers by providers; prompt reimbursement to Medicare when providers or suppliers receive payment from other primary payers.

Herbert Pollock (301) 966–4474; All other provisions.

SUPPLEMENTARY INFORMATION:

I. Background

During the first 15 years of the Medicare program, Medicare was primary payer for all services to Medicare beneficiaries, with the sole exception of services covered under workers' compensation. It was not until 1980 that Congress began to amend section 1862 of the Act to make Medicare secondary, first to no-fault and liability insurance, and later to employer group health plans that cover end-stage renal disease (ESRD) patients and that cover employed aged and aged spouses of employed individuals. Despite regulations and instructions, implementation has fallen short of expectations. It is hospitals that are most directly affected by these changes because it is primarily hospital services that are covered by private insurance.

Experience has been that many "Medicare secondary payer" (MSP) claims are not identified for MSP processing and that hospitals do not have procedures to identify other insurance that the beneficiary may have. This situation has been documented by—

- A Bureau of Quality Control study (summer of 1984), which found that up to 90 percent of all working aged claims were billed to Medicare rather than the other insurer because the hospital did not ask the beneficiary for information on other insurance or did not follow through on that information.
- Bureau of Program Operations (BPO) on-site review of hospitals, which revealed that hospitals did not have procedures to use at the time of admission to identify other insurers.
- BPO investigation of hospital software vendors, which revealed that the standard software packages for hospital admission routines do not include sufficient questions about insurers other than Medicare.

As a result, the claims that would properly be billed to another payer are sometimes mistakenly billed to Medicare. In some instances, the intermediary is able to identify the claim as an MSP claim and, at considerable expense, follow through to achieve the MSP savings. In many other instances, there is no way for the intermediary to know that a particular beneficiary has other insurance. In those cases, the claim is paid mistakenly and MSP savings are lost unless the situation is later identified and recovery made.

This problem is particularly acute when the health insurance policyholder is not the Medicare patient, but his or her spouse. There is no way of identifying this person (who may be under 65 years of age) through HCFA/SSA records. Only the hospital can identify this type of MSP case.

A second observation on program experience was made by the Office of the Inspector General (OIG) in a memorandum dated March 18, 1985. The OIG review of hospitals indicates that some hospitals bill both Medicare and the other insurer (which is contrary to Medicare program instructions) and, instead of refunding Medicare's payment, retain it, unless Medicare requests that it be refunded. The hospital has no incentive to refund the money. Since it is unlikely that the intermediary will find the case and ask for the refund, the hospital keeps a credit balance on the patient account and holds the payment.

Mistaken payments must be recovered. Medicare conditional payments, made when a claim against the other insurer is contested or payment is otherwise delayed, are also subject to recovery. Recent legislation has a direct bearing on this aspect of the program, as explained below.

Statutory Changes

A. Deficit Reduction Act of 1984

Section 2344 of the Deficit Reduction Act of 1984 (Pub. L. 98–369) amended sections 1862(b)(1), 1862(b)(2)(B), and 1862(b)(3)(A)(ii) of the Act as follows:

1. Makes explicit the Federal government's right to recover from—
   - Third parties that are required to pay before Medicare; and
   - Any entity (such as a beneficiary, provider, physician or State agency) that has received payment from a third party that is required to pay before Medicare.
2. Provides that the government—
   - Is subrogated to the right of any individual or other entity to receive payments from a third party payer to the extent of Medicare payment; and
   - May join or intervene in any action related to the events that gave rise to the need for the items or services for which Medicare paid.
3. Adds the word "promptly" to section 1862(b)(1), thus providing that Medicare payments are limited to the extent that payment has been made or can reasonably be expected to be made "promptly" by workers' compensation, or automobile, liability, or no-fault insurance. Medicare makes conditional primary payments only if the other insurer will not pay promptly.
4. Adds the phrase "or could be" to sections 1862 (b)(1), (b)(2)(B), and (b)(3)(A)(ii), thus providing that Medicare conditional payments are subject to recoupment when information is received that primary payment "could be" made by a workers' compensation plan, an automobile, liability, or no-fault insurer, or an employer group health plan, even though payment has not yet been made. This change reinforces Medicare's position as secondary payer, that is, it expressly permits HCFA to

pursue recovery of conditional or mistaken payments as soon as HCFA learns that another insurer is liable for the payment.

The provisions of section 2344 were self-implementing. A notice to that effect was published on July 17, 1985 at 50 FR 28988.

B. Consolidated Omnibus Budget Reconciliation Act of 1985

Section 9201 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272 enacted April 7, 1986) eliminated the age 70 upper limit for individuals subject to the working aged provision, effective May 1, 1986. This amendment makes Medicare secondary payer to employer group health plan coverage for employed individuals age 65 or over and spouses age 65 or over of employed individuals of any age. Previously, Medicare was secondary for these individuals only until they attained age 70.

C. Omnibus Budget Reconciliation Act of 1987

1. *Section 4036(a).* Section 4036(a) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), enacted December 22, 1987, provides that Medicare may not make conditional primary payments on behalf of an ESRD beneficiary who is covered by an employer group health plan if the plan "can reasonably be expected" to pay. Under previous law, Medicare could make conditional primary payments if the Secretary determined that the plan would not pay as promptly as Medicare. This change makes the conditional payment criteria for ESRD beneficiaries the same as for working aged beneficiaries who are covered by employer group health plans. This change is effective for services furnished on or after January 21, 1988. The section 4036(a) provision supersedes HCFA's implementation of a court order that was issued in 1984 and is summarized below.

In *National Association of Patients on Hemodialysis* v. *Heckler* (Civil Action No. 83–2210 (D.D.C.)), the district court for the District of Columbia held that HCFA's existing regulations, dealing with conditional primary Medicare payments when Medicare is secondary to employer group health plans for ESRD beneficiaries, were not consistent with the statute. Those regulations provided that Medicare could pay conditional primary benefits only if the Medicare contractor knew from experience or ascertained that the employer plan payments in general were substantially less prompt than Medicare's. The court held that the regulations were not consistent with the statutory language which directed the Secretary to deny primary Medicare benefits only if—

- The employer group health plan has paid; or
- The Secretary has determined that the employer plan will pay as promptly as Medicare.

Manual instructions implementing the court decision were issued in 1985. They stipulated that providers and suppliers were no longer required to bill the employer plan first in ESRD cases; they had the option to bill Medicare first. Contractors were instructed to pay conditional Medicare benefits if billed first and to attempt to recover later from the employer plan.

2. *Section 4085(i)(15).* Section 4085(i)(15) of Pub L. 100–203 provides a fourth exception to the exclusion of services that are not reasonable and necessary "for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member". Under this amendment, Medicare payment is available for services that are reasonable and necessary to carry out the purpose of the patient outcome assessment program established under section 1875(c) of the Act.

Notice of Proposed Rulemaking (NPRM)

On June 15, 1988, we published a notice (53 FR 22335) proposing to redesignate Subpart C of Part 405 of the Medicare rules as a new Part 411, and to revise the rules to reflect the statutory changes discussed above and to provide the greatest possible uniformity in the policies applicable to third party payer situations.

II. Summary of Analysis and Responses to Comments

We received 51 timely letters of comment from hospitals and medical centers, religious organizations, insurance companies and carriers, health organizations, law firms, individuals, a hospice, a medical society, a veterans' organization, and a State agency. The changes proposed in the NPRM, the comments received on the proposals, and our responses to those comments are discussed below.

General Comments

Comment: The commenter suggested that, in the definitions of "secondary" and "secondary payments," the term "insurance" be replaced with the more generic "coverage", which would include self-funded plans.

Response: We accepted this comment and revised § 411.21 accordingly.

Comment: The commenter believes that the provisions of these regulations should not apply to hospice patients, because it is a disservice to discuss private insurance benefits, copayments, and noncoverage with terminal patients and their families. Also, the commenter believes it is discriminatory to deny Medicare benefits because Medicare beneficiaries have insurance that is primary to Medicare. The commenter believes that involving private insurance can cause billing problems that will create hardships for hospice patients.

Response: There is no provision in the Medicare law that permits HCFA to exempt hospice patients from Medicare secondary provisions. If a Medicare beneficiary has hospice coverage through an insurance plan that is primary to Medicare, the law requires that the private insurance plan pay first. Also, the hospice, as a Medicare participating provider, is obligated to elicit information from patients and their families regarding insurance that is primary to Medicare. Hospices, not patients, are responsible for billing the other insurance.

Comment: The commenter believes that the rules limiting Medicare payments when no fault insurance, a workers' compensation plan, liability insurance, or employer group health plans are primary to Medicare are detrimental to small rural hospitals that are without staff attorneys and lack employees with legal backgrounds. Also, these rules and the rules for calculating Medicare secondary payment amounts are much more complicated than necessary.

Response: Hospitals need not have staff attorneys or personnel with legal backgrounds in order to comply with these regulations. Rural hospitals, like other Medicare participating providers, are required to elicit information from patients regarding insurance that may be primary to Medicare and to bill third party payers that are primary to Medicare. This workload is necessitated by the law that makes certain third party payers primary to Medicare. We do not believe that these rules and the rules for calculating Medicare secondary payment amounts are excessively complicated.

Comments: One commenter considered that §§ 411.43, 411.65, and 411.75, which preclude Medicare conditional payments when a beneficiary fails to file a proper third party claim, are inconsistent with the intent of the law in that they place health care providers at risk of nonpayment for a beneficiary's lack of diligence, a factor over which providers have no control. The commenter believes that the regulations should

clarify whether a provider may proceed against the beneficiary when it was the beneficiary's responsibility to file a claim and the beneficiary failed to do so.

Another commenter objected to § 411.24(l), which allows HCFA to recover a conditional payment from a provider if a provider fails to file a proper claim for third party benefits. This commenter believes this provision is inappropriate when beneficiaries fail to give a provider information about other insurance coverage.

A third stated that § 411.24(l) should contain a definition of "proper claim" and indicate how to determine the amount a primary insurer would reimburse a provider on the basis of a proper claim.

Response: The statute would be circumvented if Medicare assumed financial liability for services for which a third party payer would pay, except for the fact that someone failed to file a proper claim. Providers and beneficiaries could place primary liability on Medicare simply by failing to bill third party payers properly. Accordingly, the general rule is that Medicare will not make conditional payments when—

- A provider responsible for filing a third party claim on behalf of the beneficiary fails to file a proper claim; or
- A beneficiary responsible for filing a third party claim fails to file a proper claim for any reason other than physical or mental incapacity.

However, in response to the first two comments, this final rule makes the following changes:

Revises § 411.24(l) to specify that Medicare will not recover from the provider if the provider can show that the beneficiary gave erroneous information about other insurance coverage, such as denying the employer group health plan coverage that he or she has. (In such cases, the beneficiary is responsible for repayment.)

Revises proposed § 489.20(i) to make clear that, under specified circumstances, a provider may charge the beneficiary the amount of the third party payment reduction attributable to failure to file a proper claim. This rule applies if the provider can show that—

- It failed to file a proper claim solely because the beneficiary, for any reason other than physical or mental incapacity, failed to give the provider the necessary information; or
- The beneficiary, who was responsible for filing a proper claim, failed to do so for any reason other than physical or mental incapacity.

"Proper claim" is defined in § 411.21. Providers can obtain information from primary insurers with respect to the amount they would have paid the provider on the basis of a proper claim. Accordingly, we have not adopted the third suggestion.

Comment: Several commenters suggested that HCFA make conditional payments when a group health plan that is primary to Medicare refuses to pay primary benefits. The commenters consider that the proposed rules, by barring such payments, place the burden on health care providers to enforce the MSP provisions against recalcitrant employer group health plans. Commenters believe that Congress intended that HCFA pursue these claims.

The commenters also believe that the conditional payment policy for group health plans that are primary to Medicare, should be based on the same "promptness" criterion that is applicable when a workers' compensation plan, or no-fault or liability insurance is primary to Medicare.

Response: In the case of workers' compensation and no-fault or liability insurance, Congress included the word "promptly", indicating that Medicare should make conditional payments when payment by a third party payer could not "reasonably be expected to be made promptly". In contrast, Congress did not include a "promptness" criterion in provisions regarding employer health plans: "Payment under this title may not be made * * * to the extent that payment * * * has been made, or can reasonably be expected to be made under a group health plan."

The statute thus indicates that Medicare should not pay when it is "reasonable" to expect an employer group health plan to pay. If an employer plan is primary to Medicare under the law, it is reasonable to expect the plan to comply with the law. When a plan fails to comply with the law, it is the provider's responsibility to pursue collection from the plan, just as it is the provider's responsibility to pursue collection in any other situation in which a third party is responsible for payment. The statute clearly does not provide that Medicare assume the financial burden of recovering from employer plans that fail to meet their obligations under the law. Moreover, section 9319 of OBRA '86 amended section 1862(b) of the Act to add a subsection (b)(5) to create a private right of action with double damages if a responsible third party fails to pay primary benefits. It should be noted that in these situations, providers are prohibited from billing Medicare beneficiaries.

Comment: Two commenters expressed general concern that HCFA has been negligent in communicating with providers and group health plans about their role in the Medicare secondary payer (MSP) program. One commenter stated that insurers and group health plans are hindered by lack of HCFA guidance with respect to coordination of benefits with Medicare and that the proposed regulations are inadequate in this respect.

Response: HCFA recognizes that it is necessary to keep the community at large informed about the MSP program. In an effort to increase public awareness, since 1986 HCFA has engaged in a public information program about MSP. This program has been targeted to reach employers, insurers, providers of services, and beneficiaries. Medicare contractors and others have been meeting with the various target groups to provide the MSP message.

However, we agree that the regulations ought to provide more specific guidance for all third party payers with respect to coordination of benefits. Accordingly, we have added a new § 411.25 to delineate the responsibilities of a third party payer when it discovers that HCFA has made a primary Medicare payment in a situation in which the third party payer should have made, or did make, a primary payment. In summary, the third party must inform HCFA of the specific situation, and describe the circumstances (such as type of coverage and MSP category), and specify the time period during which it is the primary payer.

In making this change, we discovered that we had inadvertently failed to include in § 411.21 a general definition of "plan" applicable to all categories of third party payers under section 1862(b) of the Act. We have corrected this oversight.

Comment: One commenter was concerned that unpaid claims were returned to providers inappropriately because erroneous data was included in HCFA's regional data exchange system.

Response: HCFA is continually improving the regional data exchange system to eliminate erroneous data. Erroneous or outdated information is corrected upon receipt and verification.

Comment: The proposed rules require that the beneficiary must cooperate in HCFA's action to recover benefits from a primary payer. The commenter believes that HCFA should provide due process rights for beneficiaries and advise beneficiaries via published guidelines exactly the duties that are

imposed on them by the word "cooperate."

Response: HCFA has enumerated the conditions of beneficiary responsibility in §§ 411.43, 411.51, 411.65, and 411.75. Essentially, beneficiaries are responsible for filing claims with a third party payer or informing providers of coverage that is primary to Medicare so that providers may bill the third party payers on their behalf. Standard due process provisions apply to recovery of conditional payments from beneficiaries.

To Implement Statutory Amendments

A. Prompt Payment

1. *Proposal.* To implement the statutory amendment that added the word "promptly" to section 1862(b)(1) of the Act, we proposed that Medicare make conditional primary payments when the workers' compensation carrier or the no-fault insurer will not pay promptly, that is, within 120 days after receipt of the claim.

We did not propose to change the existing rules for liability insurance. Medicare makes conditional primary payments if the beneficiary has filed or has a right to file a liability claim. However, because of a court decision, a special rule applies in Oregon. Under this rule, the "promptness" criterion applies to liability claims involving Oregon hospitals. This is discussed under section G.3., of this preamble.

2. *Comments and responses.*

Comment: Several commenters expressed concern that the definition of "promptly", as applied to conditional payment, requires a provider to wait for payment for an excessive period of time after the potential primary payer has denied the claim. One commenter suggested that when there are multiple payers that are primary to Medicare the promptness period should not apply to each payee individually.

Response: The 120 days is the maximum amount of time a provider might have to wait for a third party payment before billing Medicare. If the provider can document that a potential primary payer will not pay the claim—for example, with a written rejection of the claim, it can submit the bill to Medicare without further delay. Since a payer that is primary to Medicare cannot pay until it is billed, the 120-day period must apply to each payer. If the provider receives a partial payment or a denial of payment from one primary payer and then bills another, the 120-day period would apply in the case of the second billing as well.

B. Authority to Recover as Soon as Liability Is Known to Exist, Subrogation, and Right to Intervene

1. *Proposal.* As discussed above under "Statutory Changes", the addition of the phrase "or could be" makes explicit that HCFA can seek recovery of conditional primary payments when it learns that another party is primary payer, without waiting for the other party to actually pay (411.24(b)). If HCFA is unable to recover conditional Medicare payments from a beneficiary or other party that receives payment from an entity that is primary to Medicare, HCFA has the right to recover its payment from that entity in spite of the fact that the entity has already reimbursed the beneficiary or other party (§ 411.24(i)). Therefore, entities that are primary to Medicare should ensure that Medicare has no claim against payments they plan to make to individuals who are entitled to Medicare benefits.

HCFA's clarified recovery rights, including subrogation and the right to intervene, apply to all payers that are primary to Medicare. These rights are set forth in § 411.24 and § 411.26.

In view of the clarified recovery rights, we proposed to remove the requirement (in § 405.319(b) of the current rules) for obtaining a repayment agreement from the beneficiary as a prerequisite for Medicare conditional payment in workers' compensation cases.

2. *Comments and responses.*

Comment: Several commenters objected to § 411.24(b), which pertains to HCFA's authority to recover any conditional payment made to a provider even if the provider has not received any payment from a third party payer. The commenters believe that HCFA should recoup conditional payments only after a primary payer has actually made payment, not when payment "could be made". If HCFA recovers when payment "could be made", HCFA should pay interest of 12 percent per annum if the third party is ultimately determined not to be primary to Medicare.

Response: Under the law, HCFA has the right to recoup conditional Medicare payments from a provider or other person when it learns that payment "could be made" to the provider or other person by a third party payer. However, it is HCFA's policy to first attempt to recover from the third party payer. Thus, as a practical matter, HCFA does not recover from a provider that has not received a third party payment. HCFA may request a provider to bill a designated primary payer. In such cases, HCFA's request notifies the provider that HCFA will recover its conditional payment.

There is no provision in the Medicare law that would permit Medicare to pay interest in the event that an insurer, which HCFA believes to be a primary payer, ultimately is determined not to be primary to Medicare. In this situation, the provider or other person must resubmit its claim to Medicare.

Comment: One commenter believes that the use of the term "entity" in § 411.24(d) (which states: "HCFA may recover by direct collection or by offset against monies HCFA owes the entity responsible for refunding the conditional payment") is an attempt to include employer group health plans and insurers in the application of this section. Group health plans and insurers would never be in receipt of conditional Medicare payment and would therefore not be responsible for refunding this payment.

Response: Under the law, conditional Medicare payments may be recovered from any entity responsible for primary payment, for example, employers, insurers, underwriters, and third party administrators, as well as from any entity that received a conditional payment, such as a provider or beneficiary. The liability of entities responsible for payment is more directly addressed in section 411.24(e), which states: "HCFA has a direct right of action to recover from any entity responsible for making primary payment. This includes an employer, an insurance carrier, plan, or program, and a third party administrator."

Comment: Several commenters objected to §§ 411.24 (e) and (g), which respectively reflect HCFA's right to recover from any entity responsible for paying primary benefits for services or any entity that has been paid by a third party payer. One commenter believes statutory liability for payment is imposed only on an employer group health plan and cannot be extended to insurers or administrators of the plan. The commenter suggested that the regulation be amended to reflect that an insurer or administrator cannot be liable to HCFA if it has not assumed the liability in its contract with the employer or plan. Another commenter said that HCFA should recover from either the employer or the employer's insurance carrier. Otherwise, the commenter believes that HCFA can receive "double recovery" under § 411.24(e) because this provision does not provide for return of monies collected to either the insurer or employer.

Response: Sections 411.24 (e) and (g) reflect statutory authority. Sections 1862(b) (2) and (3) of the Social Security Act both state, in part: "In order to recover payment made under this title [title XVIII] for an item or service, the United States may bring an action against *any entity* which would be responsible for payment with respect to such item or service (or any portion thereof) *under such a plan,* or against any entity * * * which has been paid with respect to such item or service under such plan, * * *" (Emphasis added.) Employers, insurers, underwriters and third party administrators are responsible for making payments "under such a plan" in accordance with the coverage provisions of the group health plan and in accordance with the law that makes group health plan coverage primary to Medicare. In cases in which the Medicare provisions conflict with a health plans, party administrators, Medicare law must prevail. (*Colonial Penn Insurance Co.* v. *Heckler,* 721, F 2d 431 (3rd Cir. 1983) and *Abrams* v. *Heckler,* 582 F. Supp. 1115 (S.D.N.Y. 1984). Accordingly, Medicare has the right to recover from any of those entities.

Third party administrators, insurers and underwriters hold themselves out as having expertise in health plan administration and being knowledgeable about the various legal and other requirements applicable to health plans. party administrators, insurers, and underwriters submit claims and make payment decisions on a day-to-day basis, often without direct involvement of the entity (such as the employer) that may *ultimately* be responsible for payment. Accordingly, it is appropriate for Medicare to recover directly from the third party administrator or insurer, and leave that entity to seek whatever recourse is available to it under its contract or other arrangement.

Also, as stipulated in the law, HCFA may recover from any entity that has received payment with respect to a service. HCFA will not pursue duplicate recoveries. Once HCFA recovers its benefits on any particular claim, it will not seek to recover the same benefits from another entity. We have amended proposed § 411.24(e) to make clear that third party administrators are among the entities responsible for refunding conditional Medicare payments.

Comment: Several commenters objected to § 411.24(f), which states that HCFA may recover without regard to any claims filing requirements imposed by the insurance program or plan, and applicable to the beneficiary, such as a time limit for filing a claim or a time limit for notifying a plan or program about the need for, or receipt of, services. The commenters believe that HCFA should be required to comply with the claims filing requirements of all insurers and health care coverage benefit plans. Also, HCFA should be required to make a claim within 1 year after a service has been furnished. The commenters believe that this section appears to unconstitutionally infringe upon contractual rights and obligations and purports to give HCFA greater rights than are afforded a person or group to whom an insurer issues a particular contract. Some contract provisions include specific time limits for filing and/or a reduction or complete loss of benefits for services that are not pre-approved. One commenter also stated that these contract provisions would also apply to services furnished by non-participating providers to an HMO member in a non-emergency situation without approval by the HMO. This would significantly affect participation in current Medicare risk-based HMO contracts. This proposal would also abrogate contract provisions establishing timely filing and other procedural requirements.

Response: This comment is acceptable in part. HCFA cannot be bound by the insurer's time frames for filing claims because those periods begin with the date of service. Under such a rule, HCFA would be unable to recover its benefits if it did not learn that the particular insurer is primary to Medicare until after the claim filing period expired.

This would conflict with the Medicare law. Congress expressly provided a direct right of recovery which begins "when notice or other information is received" (Section 1862(b) (1), (2), and (3)). Although Medicare's separately articulated subrogation rights, also contained in these sections, may be affected by a beneficiary's awareness of a claims filing limitation, Medicare's direct right of recovery is clearly unaffected by the concerns that the commenters express. Moreover, Federal law would overcome conflicting contractual or State law provisions. (See *Colonial Penn Insurance Co.* v. *Heckler* 721 F.2d 431 (3rd Cir. 1983) and *Abrams* v. *Heckler,* 582 F.Supp. 1155 (S.D.N.Y. 1984).)

We agree, however, that HCFA should observe some reasonable timeframe for filing claims—one that is similar to the timeframe for filing Medicare claims. Specifically, HCFA will file its claim by the end of the year following the year in which the Medicare contractor that paid the claim has notice that the insurer or other third party is primary payer for the particular services, and that Medicare's primary payment is, therefore, recoverable. (Notices received during the last three months of a year are considered to have been received in the following year.)

This timeframe has the advantage of being familiar to individuals involved in the Medicare claims process. As we have stated, under the law, the date HCFA receives such notice is the day that HCFA's claim arises. HCFA cannot be responsible for filing a claim within a period that starts before the Medicare intermediary or carrier that paid the claim has notice that provides the basis for recovery. We have revised proposed § 411.24(f) accordingly.

We do not see how § 411.24(f) would adversely affect HMOs because the regulations applicable to HMOs are at § 417.528 of the Medicare rules. In addition, in the case of risk-basis HMOs—

- Payment is on a prospective capitation basis and the payment is not reduced retroactively; and
- Medicare does not make any payments if a Medicare beneficiary goes outside an employer group prepaid health plan (such as an HCPP or HMO), when the same type of services could have been obtained or can be paid for by the HMO. This means that if Medicare pays in error, the entire payment is an overpayment.

Furthermore, under § 417.528, both cost and risk HMOs may charge an employer group health plan or another organization that is a primary payer for covered services that were furnished by the HMO.

Comment: Several commenters suggested deleting the rule (§ 411.24(i)), which provides that if HCFA is unable to recover from a party that received a third party payment, HCFA may recover from the third party payer even though it has already reimbursed the beneficiary or other party. The commenters believe that there is no justification for compelling a third party payer to pay the same claim twice.

Response: This comment is acceptable in part. Third party payers are responsible for reimbursing the proper party. Under section 1862(b) of the Act, HCFA is subrogated to "any right of an individual or any other entity to payment." The statute clearly gives the Medicare program a priority right of recovery. It is reasonable to expect a primary payer to take steps to ensure that it pays the proper party.

We agree that when an employer group health plan (EGHP) or no-fault insurer routinely pays primary benefits on behalf of a Medicare beneficiary without knowledge of Medicare's primary payment, the insurer has acted responsibly and should not be liable for reimbursing HCFA if HCFA is unable to recover from the party that received the insurer's primary payment. However, if a third party pays an entity other than Medicare even though it was, or should have been, aware that Medicare had made a conditional primary payment, the third party must reimburse Medicare.

We have modified the proposed § 411.24(i) so that it applies only to these circumstances and to liability insurance settlements and disputed EGHP and no-fault claims.

Liability insurers should be aware of Medicare involvement, and therefore should not pay a claim without first checking to find out if Medicare has made conditional payments. The EGHP or no-fault insurer should be aware that, if the claim was disputed, Medicare may have made a conditional payment. Accordingly, if the insurer later decides to pay the claim, it should contact Medicare to determine Medicare's claim and obtain advice regarding reimbursement.

Comment: One commenter stated that § 411.24(k), which permits recovery of conditional payments from a Medicare intermediary or carrier by offsetting funds due the intermediary or carrier, is contrary to the Administrative Procedures Act and in violation of a contractor's agreement.

Response: The Federal Claims Collection Act (FCCA) regulations require government agencies to pursue aggressively collection of a debt due the United States (4 CFR 102.1). If the debtor refuses to pay, offset against any amount owed by the government is one recommended method of collection. Authority to offset is well established under common law and is also found in § 401.607(a)(2) of the Medicare regulations and in Departmental regulations at 42 CFR 30.15(c)(5). The FCCA does not preclude a debtor from pursuing applicable administrative or judicial remedies if offset is applied. We have broadened the provision to apply to contractors, including intermediaries and carriers, as authorized under the law.

Comment: One commenter expressed the view that the proposed rules would place unreasonable burdens on physicians because it would be necessary for physicians to become expert in insurance rules, particularly the rules that govern primary and secondary payments. The commenter argues that physicians cannot be expected to acquire such knowledge, and, therefore, the rules would inappropriately put physicians at financial risk.

Response: These regulations do not place unreasonable burdens on physicians or put physicians "at risk." Physicians who accept assignment are responsible under the regulations to attempt to identify, and file a proper claim with, any third party that is primary to Medicare. If physicians follow this procedure and bill primary insurers first, Medicare will be billed only as secondary payer. A physician who follows the proper procedures but is unable to identify a third party that is primary to Medicare may bill Medicare in the usual manner, and would not be at risk.

Comment: One commenter believes that the proposed rule does not clearly state that Medicare is primary payer with respect to Medicaid. The commenter suggested that the final rule clearly state that Medicaid is an exception to the rules for Medicare as secondary payer.

Response: The proposed rule did not, and this final rule does not, change the order of payment between Medicare and Medicaid. It is not necessary for the regulations to state that Medicare is primary payer with respect to Medicaid. The law dealing with Medicare as secondary payer makes Medicare secondary only to workers' compensation, no-fault insurance, liability insurance, and certain group health plans. Since the regulations do not state that Medicaid pays before Medicare, the existing order of payment remains unchanged, that is, Medicare is primary; Medicaid is the payer of last resort.

However, § 411.26(a) provides that Medicare has a right to recover before Medicaid from any third party entity that, under section 1862(b) of the Act, is primary to both Medicare and Medicaid. Thus, if both Medicare and Medicaid have paid for services covered by such a third party payer and the amount payable by the third party is insufficient to reimburse both programs in full, Medicare must recover first. Medicare's priority right of recovery is appropriate and does not violate the concept of Medicaid being the payer of last resort. Under section 1862(b) of the Act, the Medicare program (1) may recover its benefits from a third party payer, (2) is subrogated to the right of a Medicare beneficiary and the right of *any other* entity to payment by a third party payer, and (3) may recover its payments from *any* entity that has been paid by a third party payer. Medicare's ultimate statutory authority is not to pay at all (with a concomitant right to recover any conditional benefits paid) if payment can reasonably be expected by a third party that is primary to Medicare. If a third party pays, Medicare makes no payment to the extent of the third party payment. Delay of a third party payment does not change Medicare's ultimate obligation to pay the correct amount, if any, regardless of any Medicare payments conditionally made. Thus, if a third party pays less than the charges, Medicare may be responsible for paying secondary benefits. If a third party pays the charges, Medicare may not pay at all.

Pro-rata or other sharing of recoveries with Medicaid would have the effect of creating a Medicare payment when none is authorized under the law or improperly increasing the amount of any Medicare secondary payment.

C. Self-implementing Statutory Changes

The following changes were based on self-implementing provisions of the statute that did not require us to exercise any discretion in implementing the corresponding regulation changes. We received no public comments on these provisions.

1. Removal of upper age limit for working aged. This change is reflected in § 411.70 of these final regulations.

2. Coverage of services that are reasonable and necessary to carry out the purposes of the patient outcome evaluation program. This change is reflected in § 411.15(k)(4) of these final regulations.

To Implement Policy Changes

A. To Ensure Identification of Other Payers that Are Primary to Medicare and Prompt Reimbursement When the Beneficiary, Provider, or Supplier Receives Payment from these Payers

1. *Background.* a. Part 489 of the Medicare rules deals with provider agreements. Section 489.20, which sets forth the commitments that a provider must make when it executes a provider agreement, did not include any requirement that the provider identify other insurance, bill primary payers before billing Medicare or refund Medicare payments that duplicate payments by a payer that is primary to Medicare. Previous rules did not expressly address HCFA's right to obtain information from another payer with whom a claim had been or could have been filed. Although the changes in the law have clarified HCFA's ability to recover conditional payments, it is

obvious that there can be no recovery without identification of other insurers that are primary to Medicare.

Furthermore, in order to determine Medicare's proper payment under the law, it may be necessary for HCFA to contact other payers that may be primary to Medicare with regard to benefit coordination.

2. *Proposal.* We proposed to amend § 489.20 to require providers to make four additional commitments, as follows:

a. To maintain a system for identifying, during the admission process, other payers that are primary to Medicare.

b. Except in the case of liability insurance, to bill the other insurer first.

c. When it receives payment from both Medicare and another payer that is primary to Medicare, to reimburse Medicare within 30 days of receipt of the duplicate payment (Section 411.24, which deals with HCFA's recovery rights, would also require beneficiaries and other parties that receive duplicate payments to reimburse HCFA within 30 days of receipt of the duplicate payment.)

d. If it receives, from a payer that is primary to Medicare, a payment that is reduced because the provider failed to file a proper claim with that payer—

- To bill Medicare only to the extent that secondary benefits would have been payable if the primary insurer had reimbursed the provider on the basis of a proper claim; and
- To charge the beneficiary no more than it would have been entitled to charge if it had filed a proper claim with the primary insurer.

(This fourth commitment is discussed under section H of this preamble, which deals with Medicare Secondary Payments.)

We proposed to stipulate, in § 411.24(a), that the filing of a Medicare claim, by or on behalf of the beneficiary, expressly authorizes the third party payer to release any information pertinent to the Medicare claim.

3. *Comments and responses.*

Comment—One commenter objected to the requirement that would be added to the provider agreement with respect to primary payments reduced because of failure to file a proper claim. Under the new requirement, a provider who had received a reduced payment from a primary insurer because it had not filed a proper claim with that insurer would be permitted—

- To bill Medicare only to the extent that secondary benefits would have been payable if the primary payer had not reduced its payment because of the lack of a proper claim; and
- To charge the beneficiary no more than it would have been entitled to charge if it had filed a proper claim.

The commenter stated that, under contract law, the beneficiary should be responsible to pay the hospital the difference in payment that is attributable to the provider's failure to bill properly.

Response: The changes to § 489.20 require the provider to maintain a system to identify other primary payers and to bill them before billing Medicare, except in the case of liability insurance. The provider must, needless to say, submit a proper bill to the primary payer in order to obtain the payment due.

The Secretary establishes the conditions for participation in the Medicare program. A provider, if it wishes to participate in Medicare, must agree to comply with these conditions. We believe that neither the beneficiary nor Medicare should be responsible for reimbursing a provider for a primary payer's reduction of payment when that reduction is the result of the provider's failure to submit a proper claim as required. As discussed earlier in this preamble, we would make an exception if the provider can show that its failure to file a proper claim was solely the beneficiary's fault.

Comment: Several commenters were concerned with the provision of § 489.20(h), which requires the refund of any Medicare payment within 30 days of receipt of the duplicate third party payment. One commenter stated that duplicate payments are entered into a credit balance account, which is reviewed monthly, but frequently it takes longer than 30 days to identify the party to whom the refund is due.

Response: Many providers do not refund credit balances until those balances are identified and reported by HCFA auditors. Accordingly, we believe it is necessary to require that providers regularly review those accounts and make refunds to Medicare as may be appropriate. In view of the difficulty some providers may encounter, we will change the time limit for refunds from 30 days to 60 days of receipt of the subsequent payment.

Comment: Several commenters objected to the requirement that hospitals maintain a system which, during the admissions process, identifies any primary payers other than Medicare. Some of these commenters envision detailed and costly data processing systems.

Response: Section 489.20(f) incorporates into regulations a required practice that is currently found in the provider manuals. This requirement is that providers question beneficiaries during the admissions process to identify potential other party payers. This is not a new requirement and has not been found to be costly or burdensome.

Comment: One commenter expressed concern that § 411.24(a), (which states that the filing of a claim by or on behalf of a beneficiary constitutes an express authorization for release to Medicare of any information pertinent to the Medicare claim) may violate the National Association of Insurance Commissioners (NAIC) Model Insurance Privacy and Confidentiality Act.

Response: Authorization to release information necessary to process the claim is part of the Medicare claims filing procedures. This rule gives notice to third party insurers and other entities (including State Medicaid and workers' compensation agencies, and data depositories) that anyone filing a Medicare claim has authorized Medicare to obtain information relevant to that claim.

We recognize that Medicaid programs are not third party payers, that is, are not primary to Medicare. However, a Medicaid agency may have information that is relevant to a Medicare claim against a third party. A State Medicaid agency must release any information pertinent to a Medicare claim on request. HCFA will use the information for Medicare claims processing and coordination of benefits purposes only.

B. To Reflect a Changed Interpretation of the "Immediate Relative" Exclusion

1. *Background.* a. Section 1862(a)(11) of the Act precludes payment for expenses that "constitute charges imposed by an immediate relative of the beneficiary or a member of the beneficiary's household". Previous § 405.315, which implemented what is commonly referred to as the "immediate relative exclusion"—

(1) Referred only to Medicare Part B;

(2) Barred payment for charges other than actual costs incurred by the physician or other person (hereafter referred to as "out-of-pocket expenses") for items furnished to relatives or household members;

(3) Defined "immediate relative" and "member of household";

(4) Noted that the person who imposes the charges may be a person other than the one who furnished the services;

(5) Exempted from the exclusion—

(a) Charges imposed by a partnership except when all the partners bear the excluded relationship to the patient; and

(b) Charges imposed by a corporation, regardless of the beneficiary's

relationship to the directors, officers, and stockholders of the corporation; and

(6) Made the exclusion applicable to charges imposed by an individual proprietorship if the individual who owns and operates the business is an immediate relative or member of the beneficiary's household.

b. Reexamination of § 405.315 led us to conclude that our previous interpretation of section 1862(a)(11) of the Act was inconsistent with the purpose of that provision, namely—

(1) To bar Medicare payment for items and services that would ordinarily be furnished gratis because of the relationship of the provider or physician to the beneficiary; and

(2) To avoid payment for medically unnecessary services.

c. Congress recognized that, in family situations, it is difficult to differentiate between medically necessary services and those that are furnished because of affection or concern. Thus, the exclusion was also intended to guard against potential program abuse.

The prohibition is unqualified. Neither the statutory language nor the legislative history support certain of our previous interpretations under which we—

(1) Limited the exclusion to services of physicians and suppliers, payable on a charge basis under Medicare Part B, while continuing to pay for services payable under Medicare Part A, and for actual out-of-pocket expenses incurred by physicians or suppliers to furnish their relatives items such as drugs or prosthetic devices; and

(2) Exempted from the exclusion physicians who are members of a partnership or corporation.

d. We have concluded that Congress intended to exclude the following:

(1) Services furnished under Medicare Part A as well as under Medicare Part B.

(2) All charges imposed by persons having an excluded relationship, including out-of-pocket expenses.

(3) Services furnished by physicians who are immediate relatives or household members, regardless of whether they work within a partnership or a professional corporation, or as individual practitioners.

2. *Proposal.* We proposed to revise § 405.315 (redesignated as § 411.12) to—

a. Remove the reference to Medicare Part B, so that the exclusion applies to both parts of the Medicare program;

b. Remove the exemption of out-of-pocket expenses;

c. Amend the definition of "immediate relative" to include adoptive sibling and spouse of grandparent or grandchild, which were omitted inadvertently; and

d. Specify that the exclusion applies to the following:

(1) Physician services and services furnished incident to those services if the physician who furnished the services or who ordered or supervised services incident to his or her services has an excluded relationship to the beneficiary, even if the bill or claim is submitted by a nonrelated individual or by an entity such as a partnership or a professional corporation.

(2) Services other than physician services when charges are imposed by—

(a) An individually owned provider or supplier, if the owner has an excluded relationship to the beneficiary; or

(b) A partnership, if any of the partners has an excluded relationship to the beneficiary.

Charges imposed by a corporation other than a professional corporation would not be excluded.

3. *Comments and responses.* We received no comments on these proposals.

C. To Clarify the "No Legal Obligation to Pay" Exclusion as It Applies to Services Furnished to Prisoners

1. *Background.* Section 405.311, which implemented section 1862(a)(2) of the Act, precludes Medicare payment for services when—

- The individual who receives the services has no legal obligation to pay for them; and
- No other person has a legal obligation to provide or pay for those services.

Prisoners generally have the status of public charges and as such, have no obligation to pay for the medical care they receive. Under those circumstances, previous § 405.311 barred Medicare payment. However, § 405.311 was not clear concerning the applicalion of the exclusion when a prisoner received services and is legally obligated to pay for the services. General instructions issued by HCFA provide for payment in the latter circumstances. Under those instructions, the fact that State law or regulation provides that certain prisoners or groups of prisoners may be charged for medical care is not enough to establish legal obligation. It is necessary to show that the State regularly enforces the legal obligation by routinely billing and seeking collection from all these prisoners for medical care they receive.

2. *Proposal.* We proposed to specify in the pertinent rule (now § 411.4) that Medicare payment for services to prisoners may be made—

- Only if State law requires prisoners to repay the cost of the services; and
- Only if the State actually enforces the requirement by billing and pursuing collection of amounts owed in the same way and with the same vigor that it pursues the collection of other debts.

3. *Comments and responses.*

Comment: The commenter believes that State and local officials try to avoid paying for medical care furnished to persons in their custody but who are not formally charged with a crime. For Medicare to benefit from the provision in § 411.4 relating to prisoners, the commenter believes that local officials would have to be held responsible for anyone in their custody whether or not they have been charged.

Response: Section 411.4 provides that Medicare will not pay for services furnished to persons in the custody of State and local officials under a penal statute whether or not they have been formally charged with a crime. The regulation is in accord with State law and legal precedents that require State and local penal officials to provide persons in their custody with a reasonable level of medical care. It is unnecessary for the regulation to hold officials so responsible, even if that could be done by Federal regulation. If a provider encounters an official that disclaims responsibility for furnishing care to a beneficiary in custody, the provider may enlist the aid of its Medicare intermediary to inform the official that Medicare will not pay in these cases. The intermediary may also explain the circumstances under which the regulations allow Medicare payment when State law and practice hold individuals responsible for paying for medical care furnished by the State.

D. To Clarify the Rules on the Exclusion of Services Furnished Outside the United States

1. *Background.* Section 405.313 of the previous rules, based on section 1862(a)(4) of the Act—

- Excluded services that are not furnished within the United States; and
- Defined the "United States" to include the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

General instructions issued by HCFA further specify that—

- U.S. territorial waters are part of the United States; and
- Shipboard services furnished in a U.S. port or on the same day the ship arrived at, or departed from, that port are considered as furnished in U.S. territorial waters.

There were three reasons for revising this rule:

- The definition of "United States" needed to be expanded to include the Northern Mariana Islands. Under the Covenant to establish the

Commonwealth of the Northern Mariana Islands (Pub. L. 94–241), effective January 9, 1978, "those laws which provide Federal services and financial assistance programs * * *" apply to the Marianas as they do to Guam.

• The "same day" rule was too vague and too broad to be satisfactory. It could result in claims for services furnished in a foreign port (for example, in the Bahamas) that is less than 24 hours sailing distance from a U.S. port.

• Despite the specific language of the current definition of "United States", people tended to think that facilities owned and operated by the U.S. government are part of the United States, no matter where in the world they are located. As a result of this misconception, we frequently received claims for services furnished in U.S. Army hospitals in Europe, the Canal Zone, etc., and requests for hearings on the denial of benefits for those services.

2. *Proposal.* Consistent with the preceding discussion, we proposed to—

• Add the Northern Mariana Islands and U.S. territorial waters to the definition of the United States;

• Specify that shipboard services are considered furnished in U.S. territorial waters if they are furnished while a ship is in a U.S. port or within 6 hours before arrival at, or after departure from, a U.S. port; and

• Specify that a hospital that is not located within the United States as defined, is not part of the United States even though it is owned or operated by the U.S. government.

3. *Comments and responses.* We received no comments on these proposals.

E. To Update and Clarify Policies on Services Covered under Workers' Compensation

1. *Background.* The workers' compensation rules needed revision to remove outdated content and to make them consistent with the rules pertaining to other types of insurance that are primary to Medicare.

Some of the rules had become obsolete because workers' compensation laws and plans and medical care delivery systems have changed. For example, the laws and plans have fewer limitations on number of days of care and amounts payable, and ward accommodations are no longer used.

2. *Proposal.* In the NPRM, we proposed to—

• Delete obsolete provisions, including those that deal with limitations in workers' compensation laws regarding the number of days of care or the amount payable, and payment for ward accommodations.

• Delete the provision dealing with Medicare payment for ancillary services not payable by workers' compensation. These cases would be covered by §§ 411.32 and 411.33, which set forth the basis and amounts of Medicare secondary payments when a third party payer does not pay in full.

• Stipulate that the beneficiary must cooperate in any action HCFA takes against a workers' compensation carrier. Since this rule applies to all entities that are primary to Medicare, it would be set forth in § 411.23.

• Apply workers' compensation payments toward Medicare deductible amounts (§ 411.30).

• Specify different policies for lump sum workers' compensation payments that are commutations of future benefits (§ 411.46), and those that are compromise settlements (§ 411.47).

• Make clear that Medicare does not pay for services for which payment would have been made under the Federal Black Lung Program administered by the Department of Labor (DOL) if the DOL fails to pay solely because the provider did not obtain a provider number that must be included with the claim for DOL payment (§ 411.40(b)).

3. *Comments and responses.*

Comment: Section 411.40 makes a provider responsible for the payment of services if payment could have been made under the Black Lung Program, but is precluded because the provider failed to obtain a provider number from the DOL. A commenter suggested that this provision ignores normal contract law, which holds a patient responsible for the services.

Response: While it is true that a Medicare beneficiary is ultimately responsible for services that are not payable by Medicare, providers also have obligations to their patients and to the Medicare program under their provider agreements. Provider numbers are routinely issued by the DOL and are needed in order for Black Lung claims to be processed. We do not believe that it is unreasonable for Medicare as the secondary payer to require a provider to comply with a routine obligation of this nature.

F. To Incorporate Changed Policy on No-fault Insurance

1. *Background.* With respect to no-fault insurance, current rules—

• Applied only to *automobile* no-fault, not to other kinds of no-fault insurance such as homeowners;

• Provided for Medicare conditional payment if the no-fault insurance payment will be delayed "for any reason";

• Did not address the beneficiary's responsibility for obtaining payment under no-fault insurance; and

• Did not permit third party payments to be credited against the Medicare deductibles. (This limitation also applied to payments under workers' compensation, automobile medical and liability insurance.)

We believe that—

• Medicare should be secondary payer to all types of no-fault insurance, not just automobile no-fault, since the law is not limited to automobile no fault.

• Medicare should not make a conditional payment when a no-fault insurer refuses to pay primary benefits on the grounds that it is secondary to Medicare.

• Beneficiaries should be responsible for taking necessary action to obtain any payments that can reasonably be expected under no-fault insurance as they are required to do in the case of workers' compensation.

• All third party payments should be credited against the Medicare deductibles. (The more recent amendments provide for employer plan payments to be credited.)

2. *Proposal.* We proposed the following changes:

• In § 411.50(b), to expand the definition of "no-fault insurance" to include all other types of no-fault insurance, in addition to automobile no-fault.

• In § 411.53, to provide that Medicare conditional payment will not be made if the no-fault insurance payment will be delayed because the insurer claims that its benefits are secondary to Medicare benefits.

• In § 411.51, to require that beneficiaries take any necessary action to obtain payment under no-fault insurance, and specify the circumstances under which Medicare does or does not pay.

• In § 411.30, to provide that all third party payments are credited towards the Medicare deductibles.

3. *Comments and responses.*

Comment: One commenter objected to the expanded definition of no-fault insurance in section 411.50, which provides that Medicare is secondary to non-automobile no-fault insurance such as home owners and commercial insurance. The commenter stated that "no-fault" insurance is unique to automobile insurance and, therefore, the term should not be defined to include non-automobile insurance.

Response: The expanded definition of no-fault insurance is based on the

language of section 1862(b)(1) of the Act, which reads, in part:

"Payment under this title may not be made with respect to any item or service to the extent payment has been made, or can reasonably be expected to be made promptly * * * under a workmen's compensation law or plan * * * or under an automobile *or* liability insurance policy or plan (including a self insurance plan) *or* under no-fault insurance." (Emphasis added.)

The disjunctive "or" in the statutory language, which twice separates the word "automobile" from the expression "no-fault insurance", indicates that Congress intended that the term "no fault insurance" encompass any type of insurance payments made without regard to who may have been responsible for the injury, not just automobile no-fault insurance.

Comment: A commenter believes that § 411.53(a) should be amended to exclude from Medicare coverage cases when a no-fault insurer has made only a partial payment. It would then be possible for providers to collect their full charges. The commenter stated that certain no-fault insurers are denying full payment alleging that hospitals are entitled to receive no more than the Medicare DRG payment for Medicare beneficiaries who are involved in automobile accidents, even though the no-fault insurer is billed. The commenter proposes to remedy this situation by having the final regulations state that when a no-fault insurer makes only a partial payment, the services should be excluded from Medicare coverage. This would allow the provider to be able to enforce collection of the amount due that exceeds the Medicare DRG payment.

Response: Under section 1862(b) of the Act, responsibility for payment for Medicare covered services is shifted from Medicare to certain third party insurers. The fact that Medicare is not the primary payer does not affect the status of the services as covered services under the Medicare law. Section 1862(b) is a nonpayment rather than a noncoverage provision. Thus, when a private insurer is a primary payer, Medicare may still be obligated to pay secondary benefits up to the DRG amount in accordance with the law. To amend Medicare regulations as the commenter wishes would be contrary to the law. However, we have included a new section 411.31 entitled, "Authority to bill third party payers for full charges", which states that providers may bill third party payers (except liability insurers) and expect their full charges to be paid, unless this would specifically contravene a law or an agreement with the insurer.

There is no action that HCFA can take to force a third party payer to pay in excess of the DRG amount. However, if a third party payer pays the DRG amount when charges exceed the DRG, but pays charges when the DRG is greater, a provider may have a basis for prevailing on a third party payer to change its method of reimbursement. This could be accomplished either through the Office of the State Insurance Commissioner (or other appropriate State authority) or through the courts.

Comment: One commenter proposed that the provision for Medicare conditional payments when the workers' compensation or no-fault payment will not be made promptly (§§ 411.45 and 411.53) be modified to include HMOs, health and medical care corporations, commercial health insurance, Taft-Hartley Plans, and other self-funded arrangements. The basis for the suggestion is that all these carriers and employers have an obligation to assume liability for payment.

Response: We do not agree that these classes of possible third party payers should be mentioned since payments made by them as a class may not always be primary to Medicare. To the extent that individual payers are primary to Medicare, they are already included in the provision. Furthermore, it would not be correct to say that conditional payments may be made when an *employer plan* does not pay promptly. Section 1862(b)(1) of the Medicare law states that when workers' compensation or no-fault insurance does not pay promptly, Medicare may pay conditional benefits. The provisions dealing with employer group health plans (sections 1862(b) (2) and (3)) do not include the term "promptly". If these payers were included as a class, it would appear to create this improper result.

G. To Clarify Policies on Liability Insurance

1. *Background.* With respect to liability insurance, current rules—

a. Left the way open for an insured individual or other entity to avoid use of its liability coverage by paying out-of-pocket instead of reporting the incident to the liability insurer.

b. In defining terms, under § 405.322—

(1) Included self-insured plans within the definition of liability insurance;

(2) Included, within the definition of "self-insured plan", a statement that it is a plan under which an entity is "authorized by State law to carry its own risk";

(3) Did not specify that, for purposes of the Medicare Act, payments under the Federal Tort Claims Act (FTCA) are a type of liability payment under a self-insured plan; and

(4) Did not specify that payments made by an insured party to cover deductibles imposed by the liability insurance policy are considered to be liability insurance payments.

c. Did not clearly state that a provider has no right to charge a liability insurer or a beneficiary who has received a liability insurance payment;

d. Provided that Medicare will make a conditional payment if the beneficiary has filed or has a right to file a liability claim; and

e. Did not specifically include underinsured motorist insurance (except as a type of uninsured motorist insurance) in the definition of liability insurance.

In the situation noted under the above paragraph a, HCFA was paying for services covered by liability insurance, with no opportunity to recover from the insurer. The omissions from the definitions aggravated the problem.

As explained in the preamble to the NPRM, providers should not be permitted to bill a liability insurer or to place a lien against a liability settlement for the following reasons:

- With respect to Medicare covered services, sections 1866(a) and 1842(b)(3)(B)(ii) of the Act permit providers, and suppliers who have accepted assignment, to bill the beneficiary only for applicable deductible and coinsurance amounts.
- Services for which liability insurance payments have been made or can reasonably be expected do not lose their identity as covered services. Since the amounts a beneficiary receives or is due to receive from a liability insurer are his or her own funds, billing the liability insurer or the beneficiary or filing a lien against the settlement would violate the statutory prohibition.
- In the case of liability insurance, the provider or supplier has no standing to sue or send a bill to the insurer. Since only the beneficiary—not the provider or supplier—has a right to sue the liability insurer, a bill to the liability insurer or a lien against the settlement would, in effect, be a bill to the beneficiary.
- Bills to liability insurers or beneficiaries or liens against liability settlements, if effectuated, reduce the beneficiary's recovery from the insurer unduly, since liability payments include compensation for damages other than medical expenses.

The restriction does not apply to providers and suppliers that furnish services to individuals enrolled—

- In a health maintenance organization (HMO) or a competitive medical plan (CMP) that has a contract with the Secretary under section 1876 of the Act; or
- In a health care prepaid plan (HCPP) that is paid in accordance with section 1833(a)(1)(A) of the Act.

(The rules applicable to HMOs and CMPs are set forth in § 417.528 of the Medicare regulations, and those rules, through cross-references in Subpart D of Part 417, are made applicable to HCPPs.)

Although it is necessary to limit provider charges, we believe that, because of HCFA's clarified recovery rights, no limitations need be placed on making Medicare conditional payments in liability insurance cases.

2. Proposal.

In the NPRM, we proposed to make the following changes:

a. In § 411.50(b), to—

(1) Expand the definition of "liability insurance payment" to include out-of-pocket payments by entities that carry liability insurance, including payments by the insured party to cover deductibles required by the liability policy; and

(2) Revise the definition of "self-insured plan" to include the FTCA and to remove the statement "authorized by State law".

b. Under § 411.54, to specify that providers, and suppliers who have accepted assignment, are precluded from billing liability insurers, from billing beneficiaries who have received liability insurance payments, and from filing liens against liability settlements.

c. In § 411.52, to specify that a conditional payment may be made when Medicare benefits are claimed for treatment of an injury or illness allegedly caused by another party.

d. In § 411.50(b), to clarify the definition of "liability insurance" by specifying that underinsured motorist insurance is an example of liability insurance.

3. *Comments and responses.*

Comment: Several commenters believe that the MSP statutory provisions allow hospitals to recoup, from a beneficiary's liability recovery, up to the full amount of the hospital's charges, even though the lower prospective payment system (PPS) amount would constitute payment in full if the services were paid for by Medicare. The commenters believe that Medicare program instructions and the proposed conforming regulations are unconstitutional and invalid in limiting hospitals to the PPS amount. The commenters also believe that the regulations are contrary to the statute (§ 1862(b)(1)), which they assert excludes from Medicare coverage any services for which payment has been made or can reasonably be expected to be made promptly under liability insurance.

Response: Allowing hospitals to file liens and bill liability insurers for the hospitals' full charges (rather than billing Medicare) would violate the participating hospitals' commitment not to bill Medicare beneficiaries for covered services. As noted above—

- Services that are payable under liability insurance are still Medicare covered services; and
- Allowing hospitals to file liens and to bill liability insurers for their full charges could result in out-of-pocket losses for beneficiaries. If the hospital's charges were more than the liability insurance payment, the hospital could take the beneficiary's entire recovery.

Comment: A commenter questioned whether or not § 411.54 of the proposed regulations, which prohibits hospitals from billing liability insurance, applies to hospitals affiliated with health maintenance organizations (HMOs) and health care prepayment plans (HCPPs).

Response: As noted above, § 417.528 of the current Medicare rules applies to HMOs with contracts under section 1876 of the Act whether paid on a cost or capitation basis and to HCPPs. HMOs are permitted to bill liability insurance because the statute explicitly instructs them to do so. HCPPs, although paid under section 1833(a)(1)(A) of the Act, are subject to the same rules as HMOs as provided in § 417.802 of the Medicare regulations. In these final rules, § 411.54(d)(2) is revised to reflect this policy.

Comment: A commenter asked if the standard provider agreement will be modified to recognize that HMO-affiliated hospitals that treat beneficiaries enrolled under a risk-basis contract are permitted, under § 417.528(b) to bill liability insurers.

Response: HMO affiliated hospitals do not bill on behalf of the HMO. HMOs do their own billing, and may bill liability insurers under § 417.528(b). There is no need to modify the provider agreement.

Comment: An organization that enrolls some Medicare beneficiaries under a risk-basis HMO contract with Medicare and also enrolls other Medicare beneficiaries under an HCPP arrangement asked whether for the beneficiaries under a risk-basis HMO contract it could charge a liability insurer on the basis of hospital charges or was limited to the Medicare DRG amount.

Response: Section 417.528(b) authorizes an HMO to "charge the insurance carrier, employer, or other entity * * * or the Medicare enrollee. * * *" This regulation does not specify the basis for the charge because the law does not authorize HCFA to require a particular billing method or basis (The law provides that HMOs are to charge "in accordance with the charges allowed under such law or policy", but makes no mention of the Medicare DRG amount.) We expect an HMO to use a uniform method and basis for billing all enrollees.

Comment: Since HCFA pays HCPPs on an aggregate cost (rather than service-by-service) basis, the commenter asked how the Medicare carrier can determine how much to recover from a liability insurer for Part B services for which the HCPP is not allowed to bill the liability insurer. The commenter argued that the HCPP should be permitted to bill the liability insurer for Part B services, and include as an offset on its cost report, any sums thus obtained from the insurer.

Response: As noted above, we have revised § 411.54 to permit HCPPs to bill liability insurers just as HMOs and CMPs with contracts under section 1876 of the Act.

Comment: The commenter asked whether (in cases involving liability insurance) a hospital that must bill Medicare and accept the DRG payment amount, must comply with a beneficiary's request for a statement of billed charges rather than the DRG amount.

Response: It is common practice (and may be required under State law) for hospitals to furnish patients with a statement of billed charges even though the hospital may have been paid less by a third party, for example, because of a discount agreed to by the hospital with an insurer, or under a State program. There is no reason to treat a Medicare beneficiary's request differently.

We believe that any patient has a right to know the charges for the services he or she received. Moreover, hospital charges are the standard measure of damages applied in tort recovery actions that involve liability insurance. A patient who is denied information on the amount of the hospital charges would find it very difficult to prove the nature and extent of his or her injuries. Accordingly, we have added this requirement at § 411.54.

Comment: The commenter is not clear as to whether or not the proposed regulations, particularly the prohibition

against billing liability insurance (§§ 411.54(c) and 489.20(g)), apply to outpatient hospital and physician services.

Response: The regulations state that they apply to providers of services and suppliers. We generally define terms at the beginning of the Code of Federal Regulations that applies to the Medicare and Medicaid programs (§§ 400.200 through 400.203). In § 400.202, the term "provider" is defined as including entities that furnish outpatient hospital services; the term "supplier" is defined as including physicians. The meaning of these terms is the same throughout the regulations, unless some other meaning is stated. The term "Medicare payment" used here means payment for any type of covered service, including hospital outpatient services.

Comment: The commenter believes that the regulations should make clear whether Medicare is the primary payer when the person presumed to have caused the injury has no liability insurance.

Response: We agree that clarification is needed. We have modified the definition of "self-insured plan" in section 411.50(b) so that it does not imply that self-insured plans are *limited* to entities that engage in a business, trade or profession. The revised definition cites such entities, along with nonprofit organizations, as examples of entities that may have self-insured plans. We note that the mere absence of insurance purchased from a carrier does not necessarily constitute a "plan" of self-insurance. If HCFA determines that the absence of insurance purchased from a carrier does not constitute a "self-insured plan" in a particular case, HCFA will not attempt to recover its payments from the entity that lacks insurance coverage. Section 411.50(b) also defines "liability insurance payment" as including "out-of pocket payments" and payments made under a self insured plan. Under these definitions, payments made by the self-insured individual or entity are primary to Medicare.

Comment: The commenter questioned if a provider that has been paid part of its charges by a no fault automobile insurer can bill Medicare for its regular DRG payment when liability insurance may also be available but cannot be billed because of the prohibition against billing liability insurance. The commenter believes that permitting the provider to bill for the entire DRG payment would not adversely affect the amount of the settlement or judgment the beneficiary would otherwise receive.

Response: Sections 411.32 and 411.33(e) make clear that when a provider has received a portion of its charges from a third party payer, that provider may bill Medicare only for secondary payment. Although the commenter's suggestion would not, it is true, disadvantage the beneficiary seeking a liability payment, it would be inconsistent with the statutory provisions which require that Medicare pay only to the extent that payment has not been made by the third party. Thus, Medicare may make only a secondary payment.

Comment: Several hospitals commented that being paid by Medicare an amount based on a DRG rather than their charges shortchanges them. They consider that, since liability insurers pay all the beneficiary's accident-related medical expenses based either on charges or on what Medicare has paid, payment of the DRG amount either enriches the beneficiary or saves the insurer money. Further, the commenters believe that limiting hospitals to the PPS amount would cause financial hardship, because the cost of treating the traumatic injuries typical in liability insurance cases is much greater than the amount allowed under Medicare PPS. The commenters suggest that they be permitted to collect their full charges from liability insurance.

Response: HCFA's policy of requiring providers to bill Medicare in liability insurance situations reflects Congressional intent. The legislative history of section 1862(b)(1) of the Act states that Medicare would "pay for the beneficiary's care in the usual manner and then seek reimbursement from the private insurance carrier after, and to the extent that, such carrier's liability under the private policy for the services has been determined". H.R. Rep. No. 96–1167, 96th Cong., 2d Sess. 389 (1980). The Senate history reflects similar intentions. Staff of the Senate Committee on Finance, 96th Congress 2d Session, *Spending Reductions: Recommendations of the Committee on Finance Required by the Reconciliation Process in Section 3(a)(15) of H. Con. Res. 307, the First Budget Resolution for Fiscal Year 1981* 42 (Committee Print 1980). Additionally, there are programatic reasons for HCFA's policy.

Payment of full charges would enable hospitals to profit at the expense of Medicare beneficiaries. Hospitals are allowed to collect their charges when insurance other than liability is primary under the MSP provisions because that procedure does not disadvantage beneficiaries. Insurers other than liability pay according to the terms of the coverage *for which the beneficiary has contracted.* The amounts paid are for express losses such as medical expenses, lost wages, etc. When a hospital collects from such insurers, it is *not* collecting from the beneficiary's personal funds. Liability insurance is different. It is not a contractual arrangement between a beneficiary and an insurer; it is a contractual arrangement between a policyholder (i.e., the tortfeasor) and an insurer, which is intended to protect the *policyholder* from potential financial loss resulting from a tort for which he or she is responsible. As noted above, and in the preamble to the proposed rule, a provider or supplier has no standing to sue or send a bill to the insurer. Since only the beneficiary (i.e., the injured party)—not the provider or supplier—has a right to sue the liability insurer, collecting from a beneficiary's liability insurance settlement is tantamount to collecting from the beneficiary's personal funds.

Moreover, liability insurance is unlike other insurances which specify the amounts or percentages payable for various medical procedures and whether or not such procedures are covered by the insurer. Liability insurance generally provides a lump sum coverage amount for all liability, including any unspecified medical damages. Thus, in liability insurance contexts all allocations are subject to negotiation or court order. If more is paid for medical expenses, the insurer will try to pay less for other losses or to compensate the injured party less for intangibles like pain and suffering, which never apply in non-liability insurance contexts.

When the amount of liability insurance is small in relation to the amount of a hospital's charges because the limits of the policy are low, or because the insurer offers a small amount to settle a case of questionable liability, the hospital may collect the entire liability payment remaining after payment of the beneficiary's attorney's fees. That would leave the beneficiary nothing for pain and suffering, etc., and could leave Medicare liable for the beneficiary's other covered medical expenses.

HCFA's policy, therefore, does not serve to enrich beneficiaries at the expense of hospitals. Rather, it protects beneficiaries from being disadvantaged in liability insurance cases. HCFA's policy does not save liability insurers money, since their payments are generally based on the injured person's medical *bills*, not on amounts paid by the person's insurers, including Medicare, which may be less than the billed amounts. In many States, evidence of insurance is not admissible in tort actions, or is admitted only for

limited purposes. In addition, under the commonly applicable "collateral source" rule, insurance that may cover medical expenses collateral to the defendant's obligation to pay, such as disability or health insurance, is not considered in determining amounts a person receives from the defendant.

Furthermore, the Medicare statute establishes the methodology to be used in paying for hospital services. When hospitals are paid in accordance with that methodology, they are getting amounts which, on average, reflect the cost of furnishing services economically and efficiently. They are not getting less than Congress mandated. While they may get less than their charges in a particular case, in other cases they may get more.

Comment: A commenter believes that existing regulations (§ 405.324(a)(3)(ii)) clearly recognize that hospitals would be permitted to collect liability insurance for services to Medicare patients.

Response: Section 405.324(a)(3)(ii) recognizes that hospitals might collect from liability insurers. However, that regulation works in the context of the whole body of regulations and the statute itself. Other regulations make clear that the Medicare beneficiary is to be protected from having to pay anything for covered services except certain specified amounts. The overriding principle is that the beneficiary is to be no worse off because of a particular provision than without it. That is why hospitals were once permitted to bill *willing* liability insurers. This was expected to occur after a relatively minor injury when the responsible party was anxious to settle the matter and the beneficiary asked for little more than that his medical care be paid for by the responsible party or its insurer.

Hospitals were never authorized to file liens against potential liability payments. Liens, by their very nature, smack of compulsion, rather than volition. When it came to HCFA's attention that hospitals were filing liens, and in light of 1984 changes in the statute making it clear that Medicare payment could be denied only if a liability insurance payment could be expected to be made *promptly*, the policy was changed to prohibit hospitals from billing liability insurers in any case. For the following reasons, the clarified and revised policy is the only one in keeping with the letter and spirit of current law:

1. Only rarely can liability insurance be expected to pay "promptly".

2. Hospitals had misused their option to bill "willing" liability insurers by—

- Billing when the beneficiary had filed suit and liability was being disputed; and
- Filing liens.

The prohibition against billing liability insurers will apply nationwide except in the State of Oregon. In *Oregon Association of Hospitals et. al. v. Sullivan* (Case No. CV 88-625 FR), the United States District Court for the District of Oregon has ruled that hospitals have the right "to recover up to their total charges from a liability insurer that is a primary payer and can reasonably be expected to pay promptly". HCFA is appealing this ruling. However, while HCFA's appeal is proceeding, HCFA will comply with the court's ruling in the State of Oregon. Accordingly, unless the ruling is reversed on appeal, or overturned by a statutory clarification, a special rule applies. In Oregon, hospitals may, as an alternative to billing Medicare, collect up to their full charges from a liability insurer that pays "promptly". For general purposes, § 411.21 defines "promptly" with respect to third party payments as payment made within 120 days after receipt of a claim. For the special Oregon situation, with respect to liability insurers, § 411.50 defines "prompt" payment as payment within 120 days from the earlier of the following:

- The date a claim, or lien against a potential liability settlement, is filed.
- The date a service was furnished, or, in the case of inpatient hospital services, the date of discharge.

If the liability insurer does not pay within the applicable 120-day period, the hospital may not collect from the liability insurer because the payment cannot "reasonably be expected to be made promptly". In such case, the hospital must withdraw its claim or its lien against a potential liability settlement, or be subject to HCFA sanctions, such as termination of its right to participate in the Medicare program. Sections 411.54(d) and 489.20(g) of the proposed rules are revised to reflect application in the State of Oregon.

H. To Provide Uniform Rules for Computing the Amount of Medicare Secondary Payment, and to Limit Charges When a Proper Claim Is Not Filed

1. *Background.* Under previous rules applicable to employer group health plans—

a. The Medicare secondary payment was computed on the basis of the amount of the third party payment, without reference to situations in which the latter was reduced because of failure to file a proper claim.

b. For services paid on a reasonable charge basis, the methods for computing the Medicare secondary payment differed in a way that could result in lower payments for assigned than for unassigned claims.

c. For services paid on other than a reasonable charge basis, the Medicare secondary payment was computed on the basis of the Medicare payment rate, which could be more than the charges.

In the situation noted under the above paragraph a, we believe that providers and suppliers, and beneficiaries who are not physically or mentally incapacitated, are responsible for filing proper claims and for any third party payment reduction that results from their failure to file proper claims. Therefore—

- Medicare should not have to increase its secondary payment when the primary insurer pays less because a proper claim was not filed; and
- The beneficiary should not be subject to higher charges because the provider or supplier fails to file a proper claim.

In the situations noted in paragraphs b. and c. above, we believe that—

- Lower payments for assigned claims are unfair and could discourage acceptance of assignment, which is desirable for beneficiaries; and
- The law intends that Medicare supplement the amount paid by the primary payer only in an amount that, combined with the primary payment, equals the charges for the services, or the amount the provider or supplier is obligated to accept as full payment. (When a provider or supplier is obligated to accept as full payment an amount less than its charges, HCFA considers that lower amount to be the provider's or supplier's charges.)

2. *Proposal.* To deal with the problems noted above, we proposed that—

a. When a primary insurer pays less because a proper claim was not filed—

(1) The Medicare secondary payment will be no greater than it would have been if the primary insurer had paid on the basis of a proper claim; and

(2) A provider may charge Medicare and the beneficiary no more than it would be entitled to charge if it had filed a proper claim (§§ 411.32(c) and 489.20(i)).

b. For services paid for on a reasonable charge basis (or on a monthly capitation basis that is now used for certain ESRD services), the computation method is the same for assigned as for unassigned claims (§ 411.33).

c. For services paid on other than a reasonable charge basis, a revised formula ensures that the Medicare secondary payments are not greater than the excess of the charges over the primary payments (§ 411.33(e)).

3. *Comments and responses.*

Comment: Two commenters objected to § 411.33(e), which addresses the amount of Medicare secondary payment for providers paid on a basis other than reasonable charge or capitation. They believe that it does not take into account the legislative provisions for provider payment under PPS. The commenters believe that the proposal limits payment to the provider's charges even when the PPS payment may exceed charges. The commenters believe that this provision is contrary to the PPS provisions, which provide payment based on a DRG, in that it permits HCFA to ignore the PPS rate and limit the combined third party payment and Medicare secondary payment to the provider's charges. The commenters suggested that the Medicare secondary payment be calculated by subtracting the third party payment from the gross amount payable by Medicare.

Response: As was pointed out in the Notice of Proposed Rulemaking published on June 15, 1988 (53 FR 22340), § 1862(b)(3)(B) of the Act permits Medicare secondary payments only if the employer group health plan pays less than the charges. We therefore feel that the intent of the law is for Medicare to supplement the amount paid by a primary payer up to the provider's charges. If HCFA were to base Medicare secondary payment on a PPS amount that is greater than the charges, HCFA's secondary payment policy would be anomalous. For instance, if a provider charged $10,000 for services for which the Medicare PPS rate is $18,000, and the primary payer paid $10,000, Medicare would make no payment, since the statute does not permit Medicare secondary payments where a third party payer pays the charges in full. Yet, if the third party payer paid one dollar less than the charges ($9,999), Medicare would have to pay $8,001 (the difference between the $18,000 PPS amount and the $9,999 paid by the third party payer). We have chosen a policy that does not lead to this anomalous result.

I. To Clarify Interpretation of the Working Aged Provisions.

1. *Background.* Previous rules—

a. Did not specify what is meant by "employed"

b. Did not clearly interpret how the statutory language "by reason of such employment" applies in the case of reemployed retirees and annuitants.

c. Did not specify that employer group health plans include "employee-pay-all" plans.

d. Made Medicare primary for members of a multiemployer plan whom the plan identifies as employees of employers of fewer than 20 employees (§ 405.340(b)(1)(ii)).

e. Provided (in § 405.341(d)) that an individual who was receiving employer disability payments was not considered to be employed if that individual was not receiving remuneration subject to taxation under the Federal Insurance Contributions Act (FICA), or before attaining age 65, was entitled to disability benefits under title II of the Act.

f. Provided (in § 405.341(c)(2)) that Medicare would pay primary benefits for Medicare-covered services that were not covered under the employer plan; and could make a Medicare conditional payment when employer plan payment was denied "for any reason" (§ 405.344(a)).

We considered it necessary to—

- Correct the omissions noted under paragraphs a through c above;
- Eliminate the exemption under the above paragraph d, for consistency with more recent legislation on large group health plan coverage of disabled active individuals (which does not exempt employees of employers of less than 100 employees in a multiemployer plan);
- Apply to the working aged the principle established by that same legislation, that "disabled" individuals may be considered "employed"; and
- Establish more reasonable limits with respect to the provisions noted under the above paragraph f.

2. *Proposal.* In the NPRM, we proposed to—

a. Make clear that the Medicare working aged provisions apply not only to employees but also to the self-employed, such as owners of businesses or independent contractors, and to members of the clergy and of religious bodies (§ 411.70(d)).

b. Make clear that a reemployed annuitant or retiree who is covered by an employer group health plan is considered covered "by reason of employment", even if—

(1) The plan is the same plan that previously provided coverage to that individual when he was a retiree or annuitant; or

(2) The premiums for the plan are paid from a retirement pension or fund (§ 411.72(c)).

c. Modify the definition of "employer group health plan" to make clear that it includes plans under the auspices of employers that make no financial contribution, the so-called "employee-pay-all" plans.

d. Remove from the definition of "employer group health plan" (§ 411.70(d)), the statement that a multiemployer plan does not have to pay primary benefits for individuals whom it can identify as employed by employers of less than 20 employees. (This requirement previously appeared in § 405.340(b)(1).)

e. Specify that, effective July 17, 1987, individuals who receive employer disability payments that are subject to taxation under FICA are considered employed (for purposes of the working aged provisions), even if they received social security disability benefits before attaining age 65. (July 17, 1987 is the effective date of HCFA general instructions issued under section 9319 of Pub. L. 100-203.)

f. Make clear, in § 411.75, the circumstances under which HCFA does or does not make Medicare primary payments and conditional primary payments.

3. *Comments and responses.*

Comment: Fourteen commenters opposed defining "employed" to include members of the clergy and religious orders who are paid for their services by a religious body or other entity. Most commenters stressed the disproportionate harmful effect on members of religious communities and the insufficiency of funds to pay for their medical expenses. They also considered that there is no statutory authority for the definition. They noted that the status of the clergy is not specifically addressed in section 1862(b)(3), and expressed their belief that section 210(a)(8)(A) of the Social Security Act (which defines the term "employment" for social security coverage purposes) specifically excludes the services of members of the clergy and religious orders from the term "employment".

Response: For purposes of 1862(b)(3) of the Act, the term "employed" includes not only employees, but self-employed persons such as directors of corporations and owners of businesses, as well as individuals who are engaged in "employment" as defined in section 210(a) of the Act. Contrary to the commenters' belief, section 210(a)(8) of the Act provides that, for social security purposes, the term "employment" includes service performed by members of the clergy and religious orders if an election of coverage under section 3121 of the Internal Revenue Code of 1954 is in effect. It is precisely because of this provision that members of electing orders qualify for Medicare benefits. It would be entirely inconsistent with the

statute to hold that the very employment which qualifies a person for Medicare benefits is not employment for purposes of determining that Medicare is secondary payer with respect to that person's group health plan. As with other workers covered under section 1862(b)(3) of the Act, when a member of the clergy or a religious order retires, Medicare becomes primary payer and the employer group health plan may make secondary payments. We have revised the proposed definition of "employed" to make clear that a member of a religious order is considered employed only if the religious order pays FICA taxes on behalf of the member.

Comment: Two commenters objected to including the self-employed within the definition of the term "employed." They expressed the view that self-employed individuals do not receive pay from employers and therefore should not be considered "employed." They asked which self-employed individuals are included in the definition of employed and whether employers must offer EGHP coverage to all individuals age 65 and over who are self-employed.

Response: There is nothing in section 1862(b)(3) of the Act that limits its application to "employees." This statutory provision requires that the individual be "employed" and have the group health coverage "by reason of such employment". This includes self-employment activity that is related to the entity that provides the group health coverage.

Under this provision, Medicare is secondary to employer group health plan coverage provided to a self-employed individual because of his or her self-employment activity. Although employers are not required to provide group health plan coverage to self-employed individuals, many of them do. If an employer chooses to provide coverage to self-employed individuals who are also Medicare beneficiaries, that coverage is primary to Medicare.

Self-employed persons pay taxes on self-employment income under the Self-Employment Contributions Act of 1954 and on that basis receive social security quarters of coverage for purposes of qualifying for social security benefits. Once they have earned the required quarters of coverage they are treated the same as employees for benefits under the Act, including Medicare. It would be inconsistent to hold that employment which counts toward Medicare entitlement under Title II of the Social Security Act does not count as employment for purposes of the "working aged" secondary payer provision under title XVIII of the Act. However, we recognize that section 211(b)(2) of the Act currently defines the term "self-employment income" for social security coverage as net earnings from self-employment of $400 or more. We believe that a person should not be considered self-employed for purposes of the "working aged" provision if his earnings from self-employment are less than the amount specified in section 211(b)(2). Therefore, we have revised the proposed definition of "employed" in section 411.70 to provide that a self-employed individual is considered employed for Medicare secondary payer purposes during a particular tax year only if, during the preceding tax year, the individual's net earnings from self-employment activity related to the entity that offers the group health coverage, equals or exceeds the amount specified in section 211(b)(2) of the Act.

The second part of the question relates to the Age Discrimination in Employment Act (ADEA). This Act requires employers to offer health coverage under the same terms and conditions to older and younger employees. Since the ADEA uses the term "employee", it does not apply to the self-employed.

Comment: Two commenters requested revision of section 411.72 to clarify that a reemployed individual who is a retiree or annuitant is covered by an employer group health plan "by reason of employment" only if the individual would be covered by the employer group health plan if he were a currently working nonretired person.

Response: We are clarifying the term "by reason of employment" in section 411.72. The employer must offer the same coverage to actively working former retirees and annuitants as is offered actively working non-retired individuals. If the employer does not offer group health coverage to a particular category of non-retired employee, e.g., employees hired on a contingency basis only, then the employer is not required to offer group health coverage to a former retiree who works on a contingency basis only. Coverage provided to such individuals is not considered coverage "by reason of employment," and therefore may be secondary to Medicare.

Comment: One commenter pointed out that employers and temporary employees have difficulties in adjusting to changes in Medicare's status as primary or secondary when retirees return to work on a temporary basis. Retirees may be discouraged from taking temporary jobs, particularly if they have to pay all or a portion of the premiums for insurance provided through their employers (which is primary to Medicare) instead of lower premiums for their retirement-based health insurance (which is secondary to Medicare). The commenter suggests that once an employee retires and Medicare becomes the primary payer, Medicare continue as primary until the retiree has been reemployed for at least 12 months.

Response: The law requires Medicare to be secondary payer whenever an individual has group health plan coverage "by reason of employment". The term "by reason of employment" applies to periods of temporary employment, and thus precludes Medicare from making primary payments during any period (no matter how brief) in which the individual is covered by the employer plan "by reason of employment". We recognize that there may be administrative difficulties in processing some claims when Medicare status changes from primary to secondary and back again. HCFA has instituted significant improvements in its data collection system to facilitate processing of claims in which third party payers are involved.

Comment: Several commenters objected to our proposed removal of the provision that makes Medicare primary payer for enrollees of a multiemployer plan whom the plan can identify as employed by employers of fewer than 20 employees. Some of those commenters thought that we proposed to make this change retroactive to January 1, 1983, and were particularly concerned about the impact of this retroactive change on health resources, as HCFA moved to recoup Medicare primary payments made in those circumstances. They also noted that neither the statute nor the legislative history authorized the proposed change. Congress stipulated that the working aged provisions did not apply to employers of fewer than 20 employees and did not qualify this exemption for employers that use a multiemployer plan.

Response: We did not intend to make the change retroactive and have decided not to make the change. In § 411.72 of the final rule we have restored the provision that we proposed to remove. Our decision was based on the above comments and also on—

- Comments from the religious community and others expressing concern about the disproportionate impact on small employers; and
- An opinion expressed by the Equal Employment Opportunity Commission in its Notice N–915–026 of May 12, 1988, that section 4(g) of the Age Discrimination in Employment Act (ADEA) does not require employers of

fewer than 20 employees who participate in a multiemployer plan to provide the same health insurance coverage under the same circumstances to older and younger employees. Since section 4(g) of the ADEA was enacted primarily to serve as an enforcement mechanism for the working aged provision, the two provisions should be interpreted as consistently as possible.

J. To Provide Uniform Rules for Determination of the Amount of Medicare Recovery from a Party that has Incurred Costs to Obtain a Judgment or Settlement that Resulted in a Third Party Payment

1. *Background.* Under § 405.324(b) of the previous rules, when a beneficiary received a liability insurance payment as a result of a judgment or settlement, Medicare reduced its recovery to account for the procurement costs, that is, costs such as attorney fees that the beneficiary incurred in order to obtain the judgment or settlement.

Although procurement costs are generally incurred by a beneficiary in connection with liability insurance, occasionally they may be incurred by another party or in connection with other types of insurance that are primary to Medicare.

We believe that, as a matter of equity, procurement costs should also be considered when another party has incurred such costs and when the judgment or settlement is obtained under other types of insurance primary to Medicare.

However, there need to be some exceptions and limitations. HCFA should not allow for procurement costs that do not reduce the amount of a judgment or settlement payment that is actually available to the party. This is the case, for instance, under the many workers' compensation laws that provide separate awards for attorney fees.

Furthermore, there should be a special rule for a situation in which HCFA itself incurs procurement costs, for example, when the government must file suit because the party that received payment opposes HCFA's recovery.

2. *Proposal.* We proposed to broaden the current rules, as noted under the above discussion and include them in Subpart B, which is of general applicability, as a new § 411.37 that specifies the amounts of Medicare recovery under different circumstances:

a. If the Medicare payment is less than the judgment or settlement payment, HCFA would share proportionately in the party's procurement costs.

b. If Medicare payment equals or exceeds the judgment or settlement payments, HCFA would recover only the amount that remains after subtracting the party's total procurement costs.

c. If HCFA incurs procurement costs of its own because the party that received payment opposes HCFA's recovery, the recovery amount would be the lower of the following:

(1) The Medicare payment.

(2) The total judgment or settlement amount, minus the party's total procurement costs.

3. *Comments and responses.* We received no comments on these proposals.

K. Clarifying Changes

1. *Proposal.* Of the clarifying changes that were proposed in the NPRM, and are retained in the final rule, one elicited comment as shown below.

a. In § 411.6 (which excludes from Medicare payment services furnished by a Federal provider), we added a paragraph (b)(4) to make clear that services of a Federal provider (for example, a Veterans Administration (VA) hospital) are not excluded if they are furnished under arrangements made by a participating hospital. This ensures that a participating hospital can secure for its patients necessary services that it cannot itself provide.

b. Consistent with Departmental rules (45 CFR 30.15) and other HCFA rules (42 CFR 401.607), § 411.24(d) makes clear that HCFA may recover by offset against any monies it owes to the entity responsible for refunding the Medicare conditional primary payment.

c. In § 411.35, we have clarified the limits on the amounts that a provider or supplier may charge the beneficiary (or someone on his or her behalf) when workers' compensation, no-fault insurance, or an employer plan is primary to Medicare.

2. *Comments and responses.*

Comment: The commenter believes that current regulations give veterans the impression that they must receive all care at a VA facility. Specifically, the commenter suggested that we revise § 411.6 to indicate that veterans who choose not to use VA benefits are entitled to use their Medicare coverage; and § 411.8 to make clear that veterans are entitled to primary Medicare benefits when the VA neither furnishes nor authorizes non-VA physicians or suppliers to furnish the services.

Response: There is nothing in the regulations to suggest that veterans entitled to receive care at a VA facility, or from private sources at VA expense, are not entitled to use Medicare instead. We believe that the concerns expressed by the commenter are more properly addressed through administrative processes rather than regulations. The Medicare contractor manuals and *The Medicare Handbook* clearly indicate that veterans have the option to use either their Medicare or their VA entitlement. An individual's entitlement to Medicare is not circumscribed because of eligibility under another entitlement program. The Medicare contractor manuals clearly state that an individual's entitlement to VA benefits is *not* a basis for denying a Medicare claim.

L. Organization Change.

In order to eliminate needless repetition, Subpart B of the new part 411 sets forth those definitions and rules that apply equally to all or most of the types of insurance that are primary to Medicare. These include definitions of "conditional payment", "secondary payment", "third party payment", and "proper claim", the rules on recovery of conditional payments, and the effect of third party payment on benefit utilization and deductibles.

M. Other Changes.

1. *Definition of "multiemployer plan".* It has been brought to our attention that the health insurance industry distinguishes between "multiple employer plans"—which are sponsored by employers only, and "multi-employer plans"—which are sponsored jointly by employers and unions.

In § 411.70(d), we have added a definition of "multiemployer plan" specifying that it includes both of the kinds of plans identified above.

2. *Correction of an oversight: Indemnification of beneficiaries.* In developing the proposed rules published on June 15, 1988, we overlooked the fact that section 4096 of the Omnibus Budget Reconciliation Act of 1987 amended section 1879(b) of the Social Security Act to change indemnification policy. Under this policy, a beneficiary is indemnified for payments he or she made to a provider for services which the provider knew (but the beneficiary did not know) were excluded from coverage as "not reasonable and necessary" or as custodial care. Before the section 4096 change, deductible and coinsurance amounts were excluded from the indemnification amount. Under the amended law, the beneficiary is also indemnified for deductible and coinsurance payments.

We revised proposed § 411.402 (which redesignates previous § 405.332) to conform it to the changes in the law.

3. *Conforming changes required by the Medicare Catastrophic Coverage Act of 1988 (MCCA) and the establishment of part 411.* Subpart G of Part 405 of the Medicare rules, which deals with beneficiary appeals under Medicare Part A, contains numerous references to "posthospital" SNF care, and to § 405.310 (g) and (k). Conforming changes in the subpart are required because—

- The MCCA removed the requirement that SNF care be for a condition that was previously treated in a hospital; and
- Section 405.310 has been redesignated under the new part 411 as § 411.15.

We also took advantage of this opportunity to substitute lists of designated items for some excessively long sentences and to provide paragraph headings to guide the reader.

4. *Additional clarifying change.* We have added a new § 411.32(a)(1) to make clear that Medicare benefits are secondary to benefits payable by entities that are primary to Medicare even when State law or the payer that is primary to Medicare states that its benefits are secondary to Medicare's or otherwise limits its payments to Medicare beneficiaries. This rule was stated in §§ 411.50(c)(2) and 411.62(a)(4) of the NPRM. Since this rule applies generally to Subparts C through F, it is being placed in Subpart B and replaces §§ 411.50(c)(2) and 411.62(a)(4).

III. Redesignation

As part of the overall plan to reorganize the Medicare rules and provide adequate room for expansion, most of subpart C of part 405 is redesignated under a new part 411—Exclusions from Medicare, with a separate subpart for each type of third party payer. A redesignation table is presented at the end of this preamble to help the reader locate specific content under the new numbers.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish regulatory impact analysis for any regulation that meets one of the E.O. criteria for a "major rule", that is, a rule that is likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For the purposes of the RFA, we treat all providers and third party insurers as small entities. Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if this rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must also conform to provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside a metropolitan statistical area.

Many provisions of this rule either conform to recent statutory changes or reflect current HCFA operating policies as expressed in program instructions and manuals. These regulatory provisions, of themselves, will not affect Medicare program expenditures. The other provisions of this rule will correct overly narrow interpretations of existent statutory authority, extend statutory precedents applying to some third party payers to additional categories of payers, or clarify and increase the consistency of our MSP rules. Of these rule changes, we anticipate that all but one will have a negligible impact upon program expenditures.

The change at § 411.50(b), under which the definition of "no fault insurance" is extended to include all types of no fault insurance, brings our regulations into line with the intended scope of section 1862(b)(1) of the Act. The enacting legislation (section 953 of the Omnibus Reconciliation Act of 1980) clearly does not limit Medicare's secondary status to automobile no fault situations. However, previous regulations at § 405.322 (published on April 5, 1983 at 48 FR 14810) only partially implemented the statute by making Medicare the secondary payer to automobile no fault medical coverage only. We did not consider other forms of no fault liability insurance. Because of this oversight, our intermediaries and carriers have been precluded from pursuing Trust Fund savings that would otherwise be available. This rule change allows us to maximize Trust Fund savings to the extent permitted by law. While we cannot at this time produce a precise estimate of the savings that will be achieved by this change, we expect that the maximum available savings will fall significantly short of the E.O. 12291 thresholds specified above.

We expect that implementation of these rule changes will not have a significant economic impact on a substantial number of small entities. For example, amending § 489.20 to require certain additional commitments in all provider agreements serves largely to highlight the importance of identifying MSP claims. Our intermediary and provider instructions already require hospitals and other providers to systematically identify and, where appropriate, bill payers that are primary to Medicare first.

Subsequent to the OIG study, discussed under "Background" above, we instituted a computerized cross reference system to identify claims that should have been billed to payers primary to Medicare. Once these payers are identified by the computer tracking system, the claims are referred back to the provider responsible for initial billing. Under this system, Medicare no longer pays such bills automatically.

This computerized cross reference system may eventually bring about some administrative cost savings, to the extent that intermediaries may not be required to process claims that providers properly charge to third party payers. Providers may also reap several benefits once they take advantage of the fact that, in many circumstances, Medicare is the secondary payer. Current manuals instruct hospitals and other providers on how to identify payers that are primary to Medicare. The marginal advantages for providers would be savings on the administrative costs of billing Medicare, and additional income when the third party payer pays a higher rate than Medicare would normally pay as primary payer. These benefits are already available to providers under current instructions, and will not be altered by these proposed rules.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this final rule will not have significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. We have therefore not prepared a regulatory flexibility analysis.

V. Paperwork Reduction Act

Sections 405.702, 405.710(b)(1), 411.25, 411.32(c) (last sentence), 411.54(c)(1), 411.65(b)(2), 411.75(c)(2), and 489.20(f),

contain information collection, recordkeeping and reporting requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. We have sent these requirements to OMB for review. When they approve them we will publish a notice to that effect in the **Federal Register.**

If you comment on these requirements, please send a copy of that comment directly to: Attention: Allison Herron, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Bldg., Washington, DC 20503.

VI. List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

42 CFR Part 489

Health facilities, Medicare.

REDESIGNATION TABLE FOR 42 CFR PART 405, SUBPART C

Old section	New section
405.308(a)	Removed as duplicative of § 412.42.
405.308(b)	489.34.
405.310	411.15.
405.310–1	411.2.
405.311	411.4.
405.311a	411.6.
405.311b	411.7.
405.312	411.8
405.313	411.9.
405.314	411.10
405.315	411.12.
405.316	411.40.
405.317(a)–(c)	411.30.
405.317(d)–(f)	Removed as inconsistent with current policy.
405.318	411.43.
405.319(a)	Removed for inclusion in instructions.
405.319(a)	411.45.
405.320 and 321(a)	411.46.
405.321(b)	411.47.
405.322(a)–(d)	411.50.
405.322(e)	411.23.
405.323(a)	411.28.
405.323(a)	Removed as outdated.
405.323(b)	411.50.
405.323(c)(1)	411.53.
405.323(c)(2)	411.23.
405.323(c)(3) and (4)	411.24.
405.323(c)(5)	Removd as meaningless.
405.324(a)	411.52.
405.324(b)	411.37.
405.325	411.30.
405.326	411.60.
405.327	411.62.
405.328(a)–(d)	411.33.
405.328(e) and (f)	411.30.
405.329	411.65.
405.330	411.400.
405.332	411.402.

REDESIGNATION TABLE FOR 42 CFR PART 405, SUBPART C—Continued

Old section	New section
405.334	411.404.
405.336	411.406.
405.340	411.70.
405.341	411.72.
405.342(a) and (b)	411.33.
405.342(c) and (d)	411.30.
405.343	411.35.
405.344(a)	411.75.
405.344(b)	411.24.

42 CFR chapter IV is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart C of part 405 is amended as follows:

Subpart C—Exclusions, Recovery of Overpayments, Liability of a Certifying Officer and Suspension of Payment

1. The subpart title, the table of contents, and the authority citation are revised to read as follows:

Subpart C—Recovery of Overpayments and Suspension of Payment

Sec.

405.301 Scope of subpart.

Liability for Payments to Providers and Suppliers, and Handling of Incorrect Payments

405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.

405.351 Incorrect payments for which the individual is not liable.

405.352 Adjustment of title XVIII incorrect payments.

405.353 Certification of amount that will be adjusted against individual title II or railroad retirement benefits.

405.354 Procedures for adjustment or recovery—title II beneficiary.

405.355 Waiver of adjustment or recovery.

405.356 Principles applied in waiver of, adjustment or recovery.

405.359 Liability of certifying or disbursing officer.

Suspension of Payment to Providers and Suppliers and Collection and Compromise of Overpayments

405.370 Suspension of payments to providers of services and other suppliers of services.

405.371 Proceeding for suspension.

405.372 Submission of evidence and notification of administrative determination to suspend.

405.373 Subsequent action by intermediary or carrier.

405.374 Collection and compromise of claims for overpayments.

405.375 Withholding Medicare payments to recover Medicaid overpayments.

405.376 Interest charges on overpayments and underpayments to providers and suppliers.

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, and 1879 of the Social Security Act; 42 U.S.C. 1302, 1395g, 1395(1) 1395u, 1395cc, 1395gg, 1395hh, and 1395pp, and 31 U.S.C. 3711.

2. Section 405.301 is revised to read as follows:

§ 405.301 Scope of subpart.

This subpart sets forth the policies and procedures for handling of incorrect payments and recovery of overpayments.

§§ 405.308 through 405.344 [Removed]

3. Sections 405.308 through 405.344 are removed.

B. Subpart G of part 405 is amended as set forth below:

1. The subpart heading is revised to read as follows:

Subpart G—Reconsiderations and Appeals Under Medicare Part A

2. Section 405.701 is amended to revise the section heading, provide paragraph headings, and add a new paragraph (d), to read as follows:

§ 405.701 Basis and scope.

(a) *Statutory basis.* * * *

(b) *Scope.* * * *

(c) *Applicable social security regulations.* * * *

(d) *Other applicable Medicare regulations.* Part 411 of this chapter (Exclusions from Medicare and Limitations of Medicare Payment), and Part 424 of this chapter (Conditions for Medicare Payment) also contain provisions pertinent to the determinations covered under this subpart.

3. Section 405.702 is revised to read as follows:

§ 405.702 Notice of initial determination.

(a) In all cases, with respect to services for which Medicare Part A payment has been claimed by or on behalf of an individual, the Medicare intermediary—

(1) Determines whether the services are covered under Medicare Part A;

(2) Determines whether payment is due and if so, the amount of payment due;

(3) Pays the amount due, if any; and

(4) Gives the individual written notice of the initial determination on the claim.

(b) The intermediary also notifies the provider if—

(1) The services are not covered because they constitute "custodial care"

or are "not reasonable and necessary"; and

(2) Payment cannot be made because the provider or the individual or both knew, or could reasonably have been expected to know, that the services were not covered.

(c) The notice states in detail the reasons for the determination and informs the individual and the provider of their right to reconsideration if they are dissatisfied with the initial determination.

(d) The intermediary mails the notice to the individual and the provider at their last known addresses.

4. Section 405.704 is updated and revised to read as follows:

§ 405.704 Actions that are initial determinations.

(a) *Determinations that pertain to individual application and entitlement.* Actions subject to this subpart include the following determinations:

(1) Whether the individual is entitled to Medicare Part A or Medicare Part B benefits.

(2) A disallowance of an individual's application for entitlement to hospital or supplementary medical insurance, if the individual fails to submit evidence requested by SSA to support the application. (SSA specifies in the initial determination the conditions of entitlement that the applicant failed to establish by not submitting the requested evidence.

(3) A denial of a request for withdrawal of an application for Medicare Part A or Part B.

(4) A denial of a request for cancellation of a "request for withdrawal".

(5) A determination that an individual, previously determined to be entitled to Medicare benefits is no longer entitled to those benefits, including a determination based on nonpayment of premiums.

(b) *Determinations pertaining to requests for payment under Medicare Part A.* Actions subject to this subpart include determinations with respect to the following:

(1) The coverage of services furnished.

(2) The amount of an applicable deductible.

(3) The application of the coinsurance feature.

(4) The number of days of inpatient care used in relation to the psychiatric hospital 190-day life-time maximum.

(5) [Reserved]

(6) The number of days of SNF care used in the calendar year.

(7) [Reserved]

(8) The physician certification requirement.

(9) The request for payment requirement.

(10) [Reserved]

(11) The medical necessity of services (See Parts 466 and 473 of this chapter for provisions pertaining to initial and reconsidered determinations made by a PRO.

(12) When services are excluded from coverage as custodial care or as not reasonable and necessary, in accordance with Subpart K of part 411 of this chapter, whether the individual or the provider who furnished the services, or both, knew or could reasonably have been expected to know that the services were excluded from coverage.

(13) Any other issues having a present or potential effect on the amount of benefits to be paid under Medicare Part A, including a determination as to whether there has been an overpayment or underpayment of Part A benefits, and if so, the amount.

(14) Whether a waiver of adjustment or recovery under Subpart C of Part 405 of this chapter is appropriate when an overpayment of Medicare Part A benefits has been made with respect to an individual.

5. Section 405.708 is revised to read as follows:

§ 405.708 Effect of initial determination.

An initial determination under § 405.704(b) is final and binding upon the individual on whose behalf Part A payment has been requested or, if that individual is deceased, upon the representative of the individual's estate, unless the determination is reconsidered in accordance with §§ 405.710 through 405.717, or revised in accordance with § 405.750. The individual or the individual's representative is the party to the initial determination.

6. Section 405.710 is revised to read as follows:

§ 405.710 Right to reconsideration.

(a) *Individual's right to reconsideration.* (1) An individual who is a party to an initial determination and who is dissatisfied with the determination may request reconsideration in accordance with § 405.711, regardless of the amount in controversy.

(2) If the individual is deceased, the representative of the estate may request reconsideration.

(b) *Provider's right to reconsideration.* A provider that is a party to an initial determination on a request for payment, and that is dissatisfied with the determination, may request reconsideration in accordance with § 405.711, regardless of the amount in controversy, but only if both of the following conditions are met:

(1) The individual on whose behalf the provider requested payment has indicated in writing that he or she does not intend to request reconsideration.

(2) The intermediary has determined that—

(i) The services are excluded from coverage as custodial care or as not reasonable and necessary; and

(ii) The individual or the provider, or both knew or could reasonably have been expected to know that the services were excluded under subpart K of part 411 of this chapter.

§ 405.715 [Amended]

7. In § 405.715, in paragraph (b), "405.704(a)(12)" is changed to "§ 405.704(b)(12)".

8. Section 405.740 is amended to revise paragraphs (e), (f) and (h) to read as follows:

§ 405.740 Principles for determining the amount in controversy.

* * * * *

(e) Any series of home health visits shall be considered collectively in determining the amount in controversy.

(f) Appeals from determinations pertaining to Part A benefits are not ordinarily additive except when the same factor is at issue in more than one claim.

* * * * *

(h) If payment is made for services that are ordinarily excluded from coverage as custodial care or not reasonable and necessary, the amount in controversy is the amount that the individual would have been charged for the services (less any applicable deductible and coinsurance amounts) if payment had not been made for the services in accordance with Subpart K of Part 411 of this chapter.

II. A new part 411 is added, to redesignate, revise, and amplify the content removed from part 405, Subpart C of this chapter, to read as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

Subpart A—General Exclusions and Exclusion of Particular Services

Sec.

Sec.

Authority: Secs. 1102, 1862 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

§ 411.1 Basis and scope.

(a) *Statutory basis.* Sections 1814(c), 1835(d), and 1862 of the Act exclude from Medicare payment certain specified services. The Act provides special rules for payment of services furnished by Federal providers or agencies (sections 1814(c) and 1835(d)), by hospitals and physicians outside the United States (sections 1814(f) and 1862(a)(4)), and by hospitals and SNFs of the Indian Health Service (section 1880).

(b) *Scope.* This subpart identifies:

(1) The particular t ypes of services that are excluded;

(2) The circumstances under which Medicare denies payment for certain services that are usually covered; and

(3) The circumstances under which Medicare pays for services usually excluded from payment.

§ 411.2 Conclusive effect of PRO determinations on payment of claims.

If a utilization and quality control peer review organization (PRO) has assumed review responsibility, in accordance with Part 466 of this chapter, for services furnished to Medicare beneficiaries, Medicare payment is not made for those services unless the conditions of Subpart C of Part 466 of this chapter are met.

§ 411.4 Services for which neither the beneficiary nor any other person is legally obligated to pay.

(a) *General rule.* Except as provided in § 411.8(b) (for services paid by a governmental entity), Medicare does not pay for a service if—

(1) The beneficiary has no legal obligation to pay for the service; and

(2) No other person or organization (such as a prepayment plan of which the beneficiary is a member) has a legal obligation to provide or pay for that service.

(b) *Special conditions for services furnished to individuals in custody of penal authorities.* Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met:

(1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody.

(2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.

§ 411.6 Services furnished by a Federal provider of services or other Federal agency.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, Medicare does not pay for services furnished by a Federal provider of services or other Federal agency.

(b) *Exceptions.* Payment may be made—

(1) For emergency hospital services, if the conditions of § 424.103 of this chapter are met;

(2) For services furnished by a participating Federal provider which HCFA has determined is providing services to the public generally as a community institution or agency;

(3) For services furnished by participating hospitals and SNFs of the Indian Health Service; and

(4) For services furnished under arrangements (as defined in § 409.3 of

this chapter) made by a participating hospital.

§ 411.7 Services that must be furnished at public expense under a Federal law or Federal Government contract.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, payment may not be made for services that any provider or supplier is obligated to furnish at public expense, in accordance with a law of, or a contract with, the United States.

(b) *Exception.* Payment may be made for services that a hospital or SNF of the Indian Health Service is obligated to furnish at public expense.

§ 411.8 Services paid for by a Government entity.

(a) *Basic rule.* Except as provided in paragraph (b) of this section, Medicare does not pay for services that are paid for directly or indirectly by a government entity.

(b) *Exceptions.* Payment may be made for the following:

(1) Services furnished under a health insurance plan estabilished for employees of the government entity.

(2) Services furnished under a title of the Social Security Act other than title XVIII.

(3) Services furnished in or by a participating general or special hospital that—

(i) Is operated by a State or local government agency; and

(ii) Serves the general community.

(4) Services furnished in a hospital or elsewhere, as a means of controlling infectious diseases or because the individual is medically indigent.

(5) Services furnished by a participating hospital or SNF of the Indian Health Service.

(6) Services furnished by a public or private health facility that receives government funds under a health support program that requires the facility to seek reimbursement, for services not covered under Medicare, from all available sources such as private insurance, patients' cash resources, etc.

(7) Rural health clinic services that meet the requirements set forth in Part 491 of this chapter.

§ 411.9 Services furnished outside the United States

(b) *Basic rule.* Except as specified in paragraph (b) of this section, Medicare does not pay for services furnished outside the United States. For purposes of this paragraph (a), the following rules apply:

(1) The United States includes the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, The Northern Mariana Islands, and for purposes of services rendered on board ship, the territorial waters adjoining the land areas of the United States.

(2) Services furnished on board ship are considered to have been furnished in United States territorial waters if they were furnished while the ship was in a port of one of the jurisdictions listed in paragraph (a)(1) of this section, or within 6 hours before arrival at, or 6 hours after departure from, such a port.

(3) A hospital that is not physically situated in one of the jurisdictions listed in paragraph (a)(1) of this section is considered to be outside the United States, even if it is owned or operated by the United States Government.

(b) *Exception.* Under the circumstances specified in Subpart H of Part 424 of this chapter, payment may be made for covered inpatient services furnished in a foreign hospital and, on the basis of an itemized bill, for covered physicians's services and ambulance service furnished in connection with those inpatient services, but only for the period during which the inpatient hospital services are furnished.

§ 411.10 Services required as a result of war.

Medicare does not pay for services that are required as a result of war, or an act of war, that occurs after the effective date of a beneficiary's current coverage for hospital insurance benefits or supplementary medical insurance benefits.

§ 411.12 Charges imposed by an immediate relative or member of the beneficiary's household.

(a) *Basic rule.* Medicare does not pay for services usually covered under Medicare if the charges for those services are imposed by—

(1) An immediate relative of the beneficiary; or

(2) A member of the beneficiary's household.

(b) *Definitions.* As used in this section—"*Immediate relative*" means any of the following:

(1) Husband or wife.

(2) Natural or adoptive parent, child, or sibling.

(3) Stepparent, stepchild, stepbrother, or stepsister.

(4) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(5) Grandparent or grandchild.

(6) Spouse of grandparent or grandchild.

"*Member of the household*" means any person sharing a common abode as part of a single family unit, including domestic employees and others who live together as part of a family unit, but not including a mere roomer or boarder.

"*Professional corporation*" means a corporation that is completely owned by one or more physicians and is operated for the purpose of conducting the practice of medicine, osteopathy dentistry, podiatry, optometry, or chiropractic, or is owned by other health care professionals as authorized by State law.

(c) *Applicability of the exclusion.* The exclusion applies to the following charges in the specified circumstances:

(1) *Physicians's services.*

(i) Charges for physicians' services furnished by an immediate relative of the beneficiary or member of the beneficiary's household, even if the bill or claim is submitted by another individual or by an entity such as a partnership or a professional corporation.

(ii) Charges for services furnished incident to a physician's professional services (for example by the physician's nurse or technician), only if the physician who ordered or supervised the services has an excluded relationship to the beneficiary.

(2) *Services other than physicians' services.*

(i) Charges imposed by an individually owned provider or supplier if the owner has an excluded relationship to the beneficiary; and

(ii) Charges imposed by a partnership if any of the partners has an excluded relationship to the beneficiary.

(d) *Exception to the exclusion.* The exclusion does not apply to charges imposed by a corporation other than a professional corpration.

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as—*

(1) Examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptom, complaint, or injury; or

(2) Examinations required by insurance comparies, business establishments, government agencies, or other third parties.

(b) *Eyeglasses or contact lenses, except for* post-surgical customarily used during convalescence from eye surgery in which the lens of the eye was removed (e.g., cataract surgery); or prosthetic lenses for patients who lack the lens of the eye because of congential absence or surgical removal.

(c) *Eye examinations* for the purpose of prescribing, fitting, or changing eyeglasses or contact lenses for refractive error only and procedures performed in the course of any eye examination to determine the refractive state of the eyes, without regard to the reason for the performance of the refractive procedures. Refractive procedures are excluded even when performed in connection with otherwise covered diagnosis or treatment of illness or injury.

(d) *Hearing aids* or examination for the purpose of prescribing, fitting, or changing hearing aids.

(e) *Immunizations, except for*—

(1) Vaccinations or inoculations directly related to the treatment of an injury or direct exposure such as antirabies treatment, tetanus antitoxin, or booster vaccine, botulin antitoxin, antivenom sera, or immune globulin; and

(2) Pneumococcal vaccinations that are reasonable and necessary for the prevention of illness.

(f) *Orthopedic shoes* or other supportive devices for the feet, *except when* shoes are integral parts of leg braces.

(g) *Custodial care, except as necessary* for the palliation or management of terminal illness, as provided in Part 418 of this chapter. (Custodial care is any care that does not meet the requirements for coverage as SNF care as set forth in §§ 409.30 through 409.35 of this chapter.)

(h) *Cosmetic surgery and related services,* except as required for the prompt repair of accidental injury or to improve the functioning of a malformed body member.

(i) *Dental services* in connection with the care, treatment, filling, removal, or replacement of teeth, or structures directly supporting the teeth, *except for* inpatient hospital services in connection with such dental procedures when hospitalization is required because of—

(1) The individual's underlying medical condition and clinical status; or

(2) The severity of the dental procedures.[1]

(j) *Personal comfort services, except* as necessary for the palliation or management of terminal illness as provided in Part 418 of this chapter. The use of a television set or a telephone are examples of personal *comfort* services.

(k) *Any services that are not reasonable and necessary* for one of the following purposes:

(1) For the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(2) In the case of hospice services, for the palliation or management of terminal illness, as provided in Part 418 of this chapter.

(3) In the case of pneumococcal vaccine for the prevention of illness.

(4) In the case of the patient outcome assessment program established under section 1875(c) of the Act, for carrying out the purpose of that section.

(l) *Foot care*—(1) *Basic rule.* Except as provided in paragraph (1)(2) of this section, any services furnished in connection with the following:

(i) *Routine foot care,* such as the cutting or removal of corns, or calluses, the trimming of nails, routine hygienic care (preventive maintenance care ordinarily within the realm of self care), and any service performed in the absence of localized illness, injury, or symptoms involving the feet.

(ii) *The evaluation or treatment of subluxations of the feet* regardless of underlying pathology. (Subluxations are structural misalignments of the joints, other than fractures or complete dislocations, that require treatment only by nonsurgical methods.

(iii) *The evaluation or treatment of flattened arches* (including the prescription of supportive devices) regardless of the underlying pathology.

(2) *Exceptions.* (i) Treatment of warts in not excluded.

(ii) Treatment of mycotic toenails may be covered if it is furnished no more often than every 60 days or the billing physician documents the need for more frequent treatment.

(iii) The services listed in paragraph (l)(1) of this section are not excluded if they are furnished—

(A) As an incident to, at the same time as, or as a necessary integral part of a primary covered procedure performed on the foot; or

(B) As initial diagnostic services (regardless of the resulting diagnosis) in connection with a specific symptom or complaint that might arise from a condition whose treatment would be covered.

(m) *Services to hospital inpatients* (1) *Basic rule.* Except as provided in paragraph (m)(2) of this section, any service furnished to an inpatient of a hospital by an entity other than the hospital, unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's inpatients.

(2) *Exceptions.* Physicians' services that meet the criteria of § 405.550(b) of this chapter for payment on a reasonable charge basis, and services of an anesthetist employed by a physician that meet the conditions of § 405.553(b)(4) of this chapter, are not excluded.

(Services subject to exclusion under this paragraph include, but are not limited to, clinical laboratory services, pacemakers, artificial limbs, knees, and hips, intraocular lenses, total parenteral nutrition, and services incident to physicians' services.)

Subpart B—Insurance Coverage That Limits Medicare Payment: General Provisions

§ 411.20 Basis and scope.

(a) *Statutory basis.* (1) Section 1862(b)(1) of the Act precludes Medicare payments for services to the extent that payment has been made or can reasonably be expected to be made promptly under any of the following:

(i) Workers' compensation.

(ii) Liability insurance.

(iii) No-fault insurance.

(2) Sections 1862 (b)(2) and (b)(3) of the Act (omitting the word "promptly") preclude Medicare payments for services to the extent that payment has been made or can reasonably be expected to be made under an employer group health plan, with respect to a beneficiary who is under age 65 and entitled to Medicare solely on the basis of ESRD or who is age 65 or over and either employed, or the spouse of an employed individual of any age.

(b) *Scope.* This subpart sets forth the rules that are applicable to all or several of the types of insurance coverage that are the subject of Subparts C through F of this part.

§ 411.21 Definitions.

As used in this subpart and Subparts C through F of this part—*"Conditional payment"* means a Medicare payment for services for which another insurer is primary payer, made either on the bases set forth in Subparts C through F of this part, or because the intermediary or carrier did not know that the other coverage existed.

"Coverage" or *"covered services"*, when used in connection with third party payments, means services for which a third party payer would pay if a proper claim were filed.

"Plan" means any arrangement, oral or written, by one or more entities, to provide health benefits or medical care or assume legal liability for injury or illness.

"Prompt" or *"promptly"*, when used in connection with third party payments, except as provided in § 411.50, for payments by liability insurers, means

[1] Before July 1981, inpatient hospital care in connection with dental procedures was covered only when required by the patient's underlying medical condition and clinical status.

payment within 120 days after receipt of the claim.

"Proper claim" means a claim that is filed timely and meets all other claim filing requirements specified by the plan, program, or insurer.

"Secondary", when used to characterize Medicare benefits, means that those benefits are payable only to the extent that payment has not been made and cannot reasonably be expected to be made under other coverage that is primary to Medicare.

"Secondary payments" means payments made for Medicare covered services or portions of services that are not payable under other coverage that is primary to Medicare.

"Third party payer" means an insurance policy, plan, or program that is primary to Medicare.

"Third party payment" means payment by a third party payer for services that are also covered under Medicare.

§ 411.23 Beneficiary's cooperation.

(a) If HCFA takes action to recover conditional payments, the beneficiary must cooperate in the action.

(b) If HCFA's recovery action is unsuccessful because the beneficiary does not cooperate, HCFA may recover from the beneficiary.

§ 411.24 Recovery of conditional payments.

If a Medicare conditional payment is made, the following rules apply:

(a) *Release of information.* The filing of a Medicare claim by on or behalf of the beneficiary constitutes an express authorization for any entity, including State Medicaid and workers' compensation agencies, and data depositories, that possesses information pertinent to the Medicare claim to release that information to HCFA. This information will be used only for Medicare claims processing and for coordination of benefits purposes.

(b) *Right to initiate recovery.* HCFA may initiate recovery as soon as it learns that payment has been made or could be made under workers' compensation, any liability or no-fault insurance, or an employer group health plan.

(c) *Amount of recovery.* HCFA may recover an amount equal to the Medicare payment or the amount payable by the third party, whichever is less. (The "amount payable by the third party" does not include the doubled portion of damages the third party may have paid under section 1862(b)(5) of the Act or any other punitive damages.)

(d) *Methods of recovery.* HCFA may recover by direct collection or by offset against any monies HCFA owes the entity responsible for refunding the conditional payment.

(e) *Recovery from third parties.* HCFA has a direct right of action to recover from any entity responsible for making primary payment. This includes an employer, an insurance carrier, plan, or program, and a third party administrator.

(f) *Claims filing requirements.* (1) HCFA may recover without regard to any claims filing requirements that the insurance program or plan imposes on the beneficiary or other claimant such as a time limit for filing a claim or a time limit for notifying the plan or program about the need for or receipt of services.

(2) However, HCFA will not recover its payment for particular services in the face of a claims filing requirement unless it has filed a claim for recovery by the end of the year following the year in which the Medicare intermediary or carrier that paid the claim has notice that the third party is primary to Medicare for those particular services. (A notice received during the last three months of a year is considered received during the following year.)

(g) *Recovery from parties that receive third party payments.* HCFA has a right of action to recover its payments from any entity, including a beneficiary, provider, supplier, physician, attorney, State agency or private insurer that has received a third party payment.

(h) *Reimbursement to Medicare.* If the beneficiary or other party receives a third party payment, the beneficiary or other party must reimburse Medicare within 60 days.

(i) *Special rules.* (1) In the case of liability insurance settlements and employer group health plan and no-fault insurance claims that are disputed, the following rule applies: If Medicare is not reimbursed as required by paragraph (h) of this section, the third party payer must reimburse Medicare even though it has already reimbursed the beneficiary or other party.

(2) The provisions of paragraph (i)(1) of this section also apply if a third party payer makes its payment to an entity other than Medicare when it is, or should be, aware that Medicare has made a conditional primary payment.

(3) In situations that involve procurement costs, the rule of § 411.37(b) applies.

(j) *Recovery against Medicaid agency.* If a third party payment is made to a State Medicaid agency and that agency does not reimburse Medicare, HCFA may reduce any Federal funds due the Medicaid agency (under title XIX of the Act) by an amount equal to the Medicare payment or the third party payment, whichever is less.

(k) *Recovery against Medicare contractor.* If a Medicare contractor, including an intermediary or carrier also insures, underwrites, or administers as a third party administrator, a program or plan that is primary to Medicare, and does not reimburse Medicare, HCFA may offset the amount owed against any funds due the intermediary or carrier under title XVIII of the Act or due the contractor under the contract.

(l) *Recovery when there is failure to file a proper claim*—(1) *Basic rule.* If Medicare makes a conditional payment with respect to services for which the beneficiary or provider or supplier has not filed a proper claim with a third party payer, and Medicare is unable to recover from the third party payer, Medicare may recover from the beneficiary or provider or supplier that was responsible for the failure to file a proper claim.

(2) *Exceptions:* (i) This rule does not apply in the case of liability insurance nor when failure to file a proper claim is due to mental or physical incapacity of the beneficiary.

(ii) HCFA will not recover from providers or suppliers that are in compliance with the requirements of § 489.20 of this chapter and can show that the reason they failed to file a proper claim is that the beneficiary, or someone acting on his or her behalf, failed to give, or gave erroneous, information regarding coverage that is primary to Medicare.

§ 411.25 Third party payer's notice of mistaken Medicare primary payment.

(a) If a third party payer learns that HCFA has made a Medicare primary payment for services for which the third party payer has made or ought to have made primary payment, it must give HCFA notice to that effect.

(b) The notice must describe the specific situation and the circumstances (such as the type of insurance coverage) and, if appropriate, the time period during which the insurer is primary to Medicare.

(c) In the case of plan that is not a self-insured or self-administered plan, the requirements of this section apply to the insurer, underwriter, or third party administrator.

§ 411.26 Subrogation and right to intervene.

(a) *Subrogation.* With respect to services for which Medicare paid, HCFA is subrogated to any individual, provider, supplier, physician, private insurer, State agency, attorney, or any

other entity entitled to payment by a third party payer.

(b) *Right to intervene.* HCFA may join or intervene in any action related to the events that gave rise to the need for services for which Medicare paid.

§ 411.28 Waiver of recovery and compromise of claims.

(a) HCFA may waive recovery, in whole or in part, if the probability of recovery, or the amount involved, does not warrant pursuit of the claim.

(b) General rules applicable to compromise of claims are set forth in Subpart F of Part 401 and § 405.374 of this chapter.

(c) Other rules pertinent to recovery are contained in Subpart C of Part 405 of this chapter.

§ 411.30 Effect of third party payment on benefit utilization and deductibles.

(a) *Benefit utilization.* Inpatient psychiatric hospital and SNF care that is paid for by a third party payer is not counted against the number of inpatient care days available to the beneficiary under Medicare Part A.

(b) *Deductibles.* Expenses for Medicare covered services that are paid for by third party payers are credited toward the Medicare Part A and Part B deductibles.

§ 411.31 Authority to bill third party payers for full charges.

(a) The fact that Medicare payments are limited to the DRG amount, or the reasonable charge, reasonable cost, capitation or fee schedule rate, does not affect the amount that a third party payer may pay.

(b) With respect to workers' compensation plans, no-fault insurers, and employer group health plans, a provider or supplier may bill its full charges and expect those charges to be paid unless there are limits imposed by laws other than title XVIII of the Act or by agreements with the third party payer.

§ 411.32 Basis for Medicare secondary payments.

(a) *Basic rules.* (1) Medicare benefits are secondary to benefits payable by a third party payer even if State law or the third party payer states that its benefits are secondary to Medicare benefits or otherwise limits its payments to Medicare beneficiaries.

(2) Except as provided in paragraph (b) of this section, Medicare makes secondary payments, within the limits specified in paragraph (c) of this section and in § 411.33, to supplement the third party payment if that payment is less than the charges for the services and, in the case of services paid on other than a reasonable charge basis, less than the gross amount payable by Medicare under § 411.33(e).

(b) *Exception.* Medicare does not make a secondary payment if the provider or supplier is either obligated to accept, or voluntarily accepts, as full payment, a third party payment that is less than its charges.

(c) *General limitation: Failure to file a proper claim.* When a provider or supplier, or a beneficiary who is not physically or mentally incapacitated, receives a reduced third party payment because of failure to file a proper claim, the Medicare secondary payment may not exceed the amount that would have been payable under § 411.33 if the third party payer had paid on the basis of a proper claim.

The provider, supplier, or beneficiary must inform HCFA that a reduced payment was made, and the amount that would have been paid if a proper claim had been filed.

§ 411.33 Amount of Medicare secondary payment.

(a) *Services reimbursed by Medicare on a reasonable charge basis.* Except as specified in paragraph (c) of this section, the Medicare secondary payment will be the lowest of the following:

(1) The actual charge by the supplier minus the amount paid by the third party payer.

(2) The amount that Medicare would pay if the services were not covered by a third party payer.

(3) The higher of the Medicare reasonable charge or other amount which would be payable under Medicare (without regard to any applicable Medicare deductible or coinsurance amounts) or the third party payer's allowable charge (without regard to any deductible or co-insurance imposed by the policy or plan) minus the amount actually paid by the third party payer.

(b) *Example:* An individual received treatment from a physician for which the physician charged $175. The third party payer allowed $150 of the charge and paid 80 percent of this amount or $120. The Medicare reasonable charge for this treatment is $125. The individual's Part B deductible had been met. As secondary payer, Medicare pays the lowest of the following amounts:

(1) Excess of actual charge minus the third party payment: $175−120=$55.

(2) Amount Medicare would pay if the services were not covered by a third party payer: .80×$125=$100.

(3) Third party payer's allowable charge without regard to its coinsurance (since that amount is higher than the Medicare reasonable charge in this case) minus amount paid by the third party payer: $150−120=$30.

The Medicare payment is $30.

(c) *Exception.* When an employer plan is primary to Medicare for ESRD beneficiaries, for services paid on a reasonable charge or monthly capitation rate basis, the Medicare secondary payment amount is the lowest of the following:

(1) The actual charge by the supplier, minus the amount paid by the employer plan.

(2) The amount that Medicare would pay if the services were not covered by the employer plan.

(3) The sum of the amounts that would have been paid by Medicare as primary payer and the employer plan as secondary payer, minus the amount actually paid by the employer plan as primary payer.

(d) *Example:* Using the amounts specified in paragraph (b) of this section, the Medicare secondary payment for services furnished to an ESRD beneficiary is the lowest of the following:

(1) Excess of actual charge over the employer plan's payment: $175−$120=$55.

(2) Amount Medicare would pay if the services were not covered by employer plan: .80×$125=$100.

(3) The sum of the amounts that would have been paid by Medicare as primary payer and the employer plan as secondary payer; minus the amount actually paid by the employer plan as primary payer ($100+75=$175−$120=$55. The Medicare payment is $55.

(e) *Services reimbursed on a basis other than reasonable charge or monthly capitation rate.* The Medicare secondary payment is the lowest of the following:

(1) The gross amount payable by Medicare (that is, the amount payable without considering the effect of the Medicare deductible and coinsurance or the payment by the third party payer), minus the applicable Medicare deductible and coinsurance amounts.

(2) The gross amount payable by Medicare, minus the amount paid by the third party payer.

(3) The provider's charges (or the amount the provider is obligated to accept as payment in full, if that is less than the charges), minus the amount payable by the third party payer.

(4) The provider's charges (or the amount the provider is obligated to accept as payment in full if that is less than the charges), minus the applicable Medicare deductible and coinsurance amounts.

(f) *Examples:*

(1) A hospital furnished 7 days of inpatient hospital care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services totaled $2,800. The third party payer paid $2,360. No part of the Medicare inpatient hospital deductible of $520 had been met. If the gross amount payable by Medicare in this case is $2,700, then as secondary payer, Medicare pays the lowest of the following amounts:

(i) The gross amount payable by Medicare minus the Medicare inpatient hospital deductible:
$2,700−$520=$2,180.

(ii) The gross amount payable by Medicare minus the third party payment: $2,700−$2,360=$340.

(iii) The provider's charges minus the third party payment:
$2,800−$2,360=$440.

(iv) The provider's charges minus the Medicare deductible:
$2,800−$520=$2,280. Medicare's secondary payment is $340 and the combined payment made by the third party payer and Medicare on behalf of the beneficiary is $2,700. The $520 deductible was satisfied by the third party payment so that the beneficiary incurred no out-of-pocket expenses.

(2) A hospital furnished 1 day of inpatient hospital care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services totalled $750. The third party payer paid $450. No part of the Medicare inpatient hospital deductible had been met previously. The third party payment is credited toward that deductible. If the gross amount payable by Medicare in this case is $850, then as secondary payer, Medicare pays the lowest of the following amounts:

(i) The gross amount payable by Medicare minus the Medicare deductible: $850−$520=$330.

(ii) The gross amount payable by Medicare minus the third party payment: $850−$450=$400.

(iii) The provider's charges minus the third party payment: $750−$450=$300.

(iv) The provider's charges minus the Medicare deductible: $750−$520=$230. Medicare's secondary payment is $230, and the combined payment made by the third party payer and Medicare on behalf of the beneficiary is $680. The hospital may bill the beneficiary $70 (the $520 deductible minus the $450 third party payment). This fully discharges the beneficiary's deductible obligation.

(3) An ESRD beneficiary received 8 dialysis treatments for which a facility charged $160 per treatment for a total of $1,280. No part of the beneficiary's $75 Part B deductible had been met. The third party payer paid $1,024 for Medicare-covered services. The composite rate per dialysis treatment at this facility is $131 or $1,048 for 8 treatments. As secondary payer, Medicare pays the lowest of the following:

(i) The gross amoung payable by Medicare minus the applicable Medicare deductible and coinsurance:
$1,048−$75−$194.60=$778.40. (The coinsurance is calculated as follows: $1,048 composite rate−$75 deductible=$973×20=$194.60).

(ii) The gross amount payable by Medicare minus the third party payment: $1,048−$1,024=$24.

(iii) The provider's charges minus the third party payment:
$1,280−$1,024=$256.

(iv) The provider's charges minus the Medicare deductible:
$1,280−$75=$1,205. Medicare pays $24. The beneficiary's Medicare deductible and coinsurance were met by the third party payment.

(4) A hospital furnished 5 days of inpatient care in 1987 to a Medicare beneficiary. The provider's charges for Medicare-covered services were $4,000 and the gross amount payable was $3,500. The provider agreed to accept $3,000 from the third party as payment in full. The third party payer paid $2,900 due to a deductible requirement under the third party plan. Medicare considers the amount the provider is obligated to accept as full payment ($3,000) to be the provider charges. The Medicare secondary payment is the lowest of the following:

(i) The gross amount payable by Medicare minus the Medicare inpatient deductible: $3,500−$520=$2,980.

(ii) The gross amount payable by Medicare minus the third party payment: $3,500−$2,900=$600.

(iii) The provider's charge minus the third party payment:
$3,000−$2,900=$100.

(iv) The provider's charges minus the Medicare inpatient deductible:
$3,000−$520=$2,480. The Medicare secondary payment is $100. When Medicare is the secondary payer, the combined payment made by the third party payer and Medicare on behalf of the beneficiary is $3,000. The beneficiary has no liability for Medicare-covered services since the third party payment satisfied the $520 deductible.

§ 411.35 Limitations on charges to a beneficiary or other party when a workers' compensation plan, a no-fault insurer, or an employer group health plan is primary payer.

(a) *Definition.* As used in this section. "Medicare-covered services" means services for which Medicare benefits are payable or would be payable except for the Medicare deductible and coinsurance provisions and the amounts payable by the third party payer.

(b) *Applicability.* This section applies when a workers' compensation plan, a no-fault insurer or an employer group health plan is primary to Medicare.

(c) *Basic rule.* Except as provided in paragraph (d) of this section, the amounts the provider or supplier may collect or seek to collect, for the Medicare-covered services from the beneficiary or any entity other than the workers' compensation plan, the no-fault insurer, or the employer plan and Medicare, are limited to the following:

(1) The amount paid or payable by the third party payer to the beneficiary. If this amount exceeds the amount payable by Medicare (without regard to deductible or coinsurance), the provider or supplier may retain the third party payment in full without violating the terms of the provider agreement or the conditions of assignment.

(2) The amount, if any, by which the applicable Medicare deductible and coinsurance amounts exceed any third party payment made or due to the beneficiary or to the provider or supplier for the medical services.

(3) The amount of any charges that may be made to a beneficiary under § 413.35 of this chapter when cost limits are applied to the services, or under § 489.32 of this chapter when the services are partially covered, but only to the extent that the third party payer is not responsible for those charges.

(d) *Exception.* The limitations of paragraph (c) of this section do not apply if the services were furnished by a supplier that is not a participating supplier and has not accepted assignment for the services or claimed payment under § 424.64 of this chapter.

§ 411.37 Amount of Medicare recovery when a third party payment is made as a result of a judgment or settlement.

(a) *Recovery against the party that received payment.*—(1) *General rule.* Medicare reduces its recovery to take account of the cost of procuring the judgment or settlement, as provided in this section, if—

(i) Procurement costs are incurred because the claim is disputed; and

(ii) Those costs are borne by the party against which HCFA seeks to recover.

(2) *Special rule.* If HCFA must file suit because the party that received payment opposes HCFA's recovery, the recovery amount is as set forth in paragraph (e) of this section.

(b) *Recovery against the third party payer.* If HCFA seeks recovery from the third party payer, in accordance with

§ 411.24(i), the recovery amount will be no greater than the amount determined under paragraph (c) or (d) or (e) of this section.

(c) *Medicare payments are less than the judgment or settlement amount.* If Medicare payments are less than the judgment or settlement amount, the recovery is computed as follows:

(1) Determine the ratio of the procurement costs to the total judgment or settlement payment.

(2) Apply the ratio to the Medicare payment. The product is the Medicare share of procurement costs.

(3) Subtract the Medicare share of procurement costs from the Medicare payments. The remainder is the Medicare recovery amount.

(d) *Medicare payments equal or exceed the judgment or settlement amount.* If Medicare payments equal or exceed the judgment or settlement amount, the recovery amount is the total judgment or settlement payment minus the total procurement costs.

(e) *HCFA incurs procurement costs because of opposition to its recovery.* If HCFA must bring suit against the party that received payment because that party opposes HCFA's recovery, the recovery amount is the lower of the following:

(1) Medicare payment.

(2) The total judgment or settlement amount, minus the party's total procurement cost.

Subpart C—Limitations on Medicare Payment for Services Covered under Workers' Compensation

§ 411.40 General provisions.

(a) *Definition "Workers' compensation plan of the United States"* includes the workers' compensation plans of the 50 States, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands, as well as the systems provided under the Federal Employees' Compensation Act and the Longshoremen's and Harbor Workers' Compensation Act.

(b) *Limitations on Medicare payment.* (1) Medicare does not pay for any services for which—

(i) Payment has been made, or can reasonably be expected to be made promptly under a workers' compensation law or plan of the United States or a State; or

(ii) Payment could be made under the Federal Black Lung Program, but is precluded solely because the provider of the services has failed to secure, from the Department of Labor, a provider number to include in the claim.

(2) If the payment for a service may not be made under workers' compensation because the service is furnished by a source not authorized to provide that service under the particular workers' compensation program. Medicare pays for the service if it is a covered service.

(3) Medicare makes secondary payments in accordance with § 411.32 and § 411.33.

§ 411.43 Beneficiary's responsibility with respect to workers' compensation.

(a) The beneficiary is responsible for taking whatever action is necessary to obtain any payment that can reasonably be expected under workers' compensation.

(b) Except as specified in § 411.45(a), Medicare does not pay until the beneficiary has exhausted his or her remedies under workers' compensation.

(c) Except as specified in § 411.45(b), Medicare does not pay for services that would have been covered under workers' compensation if the beneficiary had filed a proper claim.

(d) However, if a claim is denied for reasons other than not being a proper claim, Medicare pays for the services if they are covered under Medicare.

§ 411.45 Basis for conditional Medicare payment in workers' compensation cases.

A conditional Medicare payment may be made under either of the following circumstances:

(a) The beneficiary has filed a proper claim for workers' compensation benefits, but the intermediary or carrier determines that the workers' compensation carrier will not pay promptly. This includes cases in which a workers' compensation carrier has denied a claim.

(b) The beneficiary, because of physical or mental incapacity, failed to file a proper claim.

§ 411.46 Lump-sum payments.

(a) *Lump-sum commutation of future benefits.* If a lump-sum compensation award stipulates that the amount paid is intended to compensate the individual for all future medical expenses required because of the work-related injury or disease, Medicare payments for such services are excluded until medical-expenses related to the injury or disease equal the amount of the lump-sum payment.

(b) *Lump-sum compromise settlement.* (1) A lump-sum compromise settlement is deemed to be a workers' compensation payment for Medicare purposes, even if the settlement agreement stipulates that there is no liability under the workers' compensation law or plan.

(2) If a settlement appears to represent an attempt to shift to Medicare the responsibility for payment of medical expenses for the treatment of a work-related condition, the settlement will not be recognized. For example, if the parties to a settlement attempt to maximize the amount of disability benefits paid under workers' compensation by releasing the workers' compensation carrier from liability for medical expenses for a particular condition even though the facts show that the condition is work-related, Medicare will not pay for treatment of that condition.

(c) *Lump-sum compromise settlement: Effect on services furnished before the date of settlement.* Medicare pays for medical expenses incurred before the lump-sum compromise settlement only to the extent specified in § 411.47.

(d) *Lump-sum compromise settlement: Effect on payment for services furnished after the date of settlement.*—(1) *Basic rule.* Except as specified in paragraph (d)(2) of this section, if a lump-sum compromise settlement forecloses the possibility of future payment of workers' compensation benefits, medical expenses incurred after the date of the settlement are payable under Medicare.

(2) *Exception.* If the settlement agreement allocates certain amounts for specific future medical services, Medicare does not pay for those services until medical expenses related to the injury or disease equal the amount of the lump-sum settlement allocated to future medical expenses.

§ 411.47 Apportionment of a lump-sum compromise settlement of a workers' compensation claim.

(a) *Determining amount of compromise settlement considered as a payment for medical expenses.* (1) If a compromise settlement allocates a portion of the payment for medical expenses and also gives reasonable recognition to the income replacement element, that apportionment may be accepted as a basis for determining Medicare payments.

(2) If the settlement does not give reasonable recognition to both elements of a workers' compensation award or does not apportion the sum granted, the portion to be considered as payment for medical expenses is computed as follows:

(i) Determine the ratio of the amount awarded (less the reasonable and necessary costs incurred in procuring the settlement) to the total amount that would have been payable under workers' compensation if the claim had not been compromised.

(ii) Multiply that ratio by the total medical expenses incurred as a result of

the injury or disease up to the date of the settlement. The product is the amount of the workers' compensation settlement to be considered as payment for medical expenses.

Example: As the result of a work injury, an individual suffered loss of income and incurred medical expenses for which the total workers' compensation payment would have been $24,000 if the case had not been compromised. The medical expenses amounted to $18,000. The workers' compensation carrier made a settlement with the beneficiary under which it paid $8,000 in total. A separate award was made for legal fees. Since the workers' compensation compromise settlement was for one-third of the amount which would have been payable under workers' compensation had the case not been compromised ($8,000/$24,000 = ⅓), the workers' compensation compromise settlement is considered to have paid for one-third of the total medical expenses (⅓ × $18,000 = $6,000).

(b) *Determining the amount of the Medicare overpayment.* When conditional Medicare payments have been made, and the beneficiary receives a compromise settlement payment, the Medicare overpayment is determined as set forth in this paragraph (b). The amount of the workers' compensation payment that is considered to be for medical expenses (as determined under paragraph (a) of this section) is applied, at the workers' compensation rate of payment prevailing in the particular jurisdiction, in the following order.

(1) First to any beneficiary payments for services payable under workers' compensation but not covered under Medicare.

(2) Then to any beneficiary payments for services payable under workers' compensation and also covered under Medicare Part B. (These include deductible and coinsurance amounts and, in unassigned cases, the charge in excess of the reasonable charge.)

(3) Last to any beneficiary payments for services payable under workers' compensation and also covered under Medicare Part A. (These include Part A deductible and coinsurance amounts and charges for services furnished after benefits are exhausted.

The difference between the amount of the workers' compensation payment for medical expenses and any beneficiary payments constitutes the Medicare overpayment. The beneficiary is liable for that amount.

Example: In the example in paragraph (a) of this section, it was determined that the workers' compensation settlement paid for $6,000 of the total medical expenses. The $18,000 in medical expenses included $1,500 in charges for services not covered under Medicare, $7,500 in charges for services covered under Medicare Part B, and $9,000 in hospital charges for services covered under Medicare Part A. All charges were at the workers' compensation payment rate, that is, in amounts the provider or supplier must accept as payment in full.

The Medicare reasonable charge for physicians' services was $7,000 and Medicare paid $5,600 (80 percent of the reasonable charge). The Part B deductible had been met. The Medicare payment rate for the hospital services was $8,000. Medicare paid the hospital $7,480 ($8,000—the Part A deductible of $520).

In this situation, the beneficiary's payments totalled $3,920:

Services not covered under Medicare	$1,500
Excess of physicians' charges over reasonable charges	500
Medicare Part B coinsurance	1,400
Part A deductible	520
Total	3,920

The Medicare overpayment, for which the beneficiary is liable, would be $2,080 ($6,000–$3,920).

Subpart D—Limitations on Medicare Payment for Services Covered Under Liability or No-Fault Insurance

§ 411.50 General provisions.

(a) *Limits on applicability.* The provisions of this Subpart C do not apply to any services required because of accidents that occurred before December 5, 1980.

(b) *Definitions.*

"Automobile" means any self-propelled land vehicle of a type that must be registered and licensed in the State in which it is owned.

"Liability insurance" means insurance (including a self-insured plan) that provides payment based on legal liability for injury or illness or damage to property. It includes, but is not limited to, automobile liability insurance, uninsured motorist insurance, underinsured motorist insurance, homeowners' liability insurance, malpractice insurance, product liability insurance, and general casualty insurance.

"Liability insurance payment" means a payment by a liability insurer, or an out-of-pocket payment, including a payment to cover a deductible required by a liability insurance policy, by any individual or other entity that carries liability insurance or is covered by a self-insured plan.

"No-fault insurance" means insurance that pays for medical expenses for injuries sustained on the property or premises of the insured, or in the use, occupancy, or operation of an automobile, regardless of who may have been responsible for causing the accident. This insurance includes but is not limited to automobile, homeowners, and commercial plans. It is sometimes called "medical payments coverage", "personal injury protection", or "medical expense coverage".

"Prompt" or *"promptly"*, when used in connection with payment by a liability insurer means payment within 120 days after the earlier of the following:

(1) The date a claim is filed with an insurer or a lien is filed against a potential liability settlement.

(2) The date the service was furnished or, in the case of inpatient hospital services, the date of discharge.

"Self-insured plan" means a plan under which an individual, or a private or governmental entity, carries its own risk instead of taking out insurance with a carrier. The term includes a plan of an individual or other entity engaged in a business, trade, or profession, a plan of non-profit organization such as a social, fraternal, labor, educational, religious, or professional organization, and the plan established by the Federal government to pay liability claims under the Federal Tort Claims Act.

"Underinsured motorist insurance" means insurance under which the policyholder's level of protection against losses caused by another is extended to compensate for inadequate coverage in the other party's policy or plan.

"Uninsured motorist insurance" means insurance under which the policyholder's insurer will pay for damages caused by a motorist who has no automobile liability insurance or who carries less than the amount of insurance required by law, or is underinsured.

(c) *Limitation on payment for services covered under no-fault insurance.* Except as provided under §§ 411.52 and 411.53 with respect to conditional payments, Medicare does not pay for the following:

(1) Services for which payment has been made or can reasonably be expected to be made promptly under automobile no-fault insurance.

(2) Services furnished on or after (effective date of final regulations) for which payment has been made or can reasonably be expected to be made promptly under any no-fault insurance other than automobile no-fault.

§ 411.51 Beneficiary's responsibility with respect to no-fault insurance.

(a) The beneficiary is responsible for taking whatever action is necessary to obtain any payment that can reasonably be expected under no-fault insurance.

(b) Except as specified in § 411.53, Medicare does not pay until the beneficiary has exhausted his or her remedies under no-fault insurance.

(c) Except as specified in § 411.53, Medicare does not pay for services that would have been covered by the no-fault insurance if the beneficiary had filed a proper claim.

(d) However, if a claim is denied for reasons other than not being a proper claim, Medicare pays for the services if they are covered under Medicare.

§ 411.52 Basis for conditional Medicare payment in liability cases.

If HCFA has information that services for which Medicare benefits have been claimed are for treatment of an injury or illness that was allegedly caused by another party, a conditional Medicare payment may be made.

§ 411.53 Basis for conditional Medicare payment in no-fault cases.

A conditional Medicare payment may be made in no-fault cases under either of the following circumstances:

(a) The beneficiary, or the provider or supplier, has filed a proper claim for no-fault insurance benefits but the intermediary or carrier determines that the no-fault insurer will not pay promptly for any reason other than the circumstances described in § 411.32(a)(1). This includes cases in which the no-fault insurance carrier has denied the claim.

(b) The beneficiary, because of physical or mental incapacity, failed to meet a claim-filing requirement stipulated in the policy.

§ 411.54 Limitation on charges when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer.

(a) *Definition.* As used in this section, *"Medicare-covered services"* means services for which Medicare benefits are payable or would be payable except for applicable Medicare deductible and coinsurance provisions. Medicare benefits are payable notwithstanding potential liability insurance payments, but are recoverable in accordance with § 411.24.

(b) *Applicability.* This section applies when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer for injuries or illness allegedly caused by another party.

(c) *Basic rules*—(1) *Itemized bill.* A hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

(2) *Specific limitations.* Except as provided in paragraph (d) of this section, the provider or supplier—

(i) May not bill the liability insurer nor place a lien against the beneficiary's liability insurance settlement for Medicare covered services.

(ii) May only bill Medicare for Medicare-covered services; and

(iii) May bill the beneficiary only for applicable Medicare deductible and coinsurance amounts plus the amount of any charges that may be made to a beneficiary under § 413.35 of this chapter (when cost limits are applied to the services) or under § 489.32 of this chapter (when services are partially covered).

(d) *Exceptions*—(1) *Nonparticipating suppliers.* The limitations of paragraph (c)(2) of this section do not apply if the services were furnished by a supplier that is not a participating supplier and has not accepted assignment for the services or has not claimed payment for them under § 424.64 of this chapter.

(2) *Prepaid health plans.* If the services were furnished through an organization that has a contract under section 1876 of the Act (that is, through an HMO or CMP), or through an organization that is paid under section 1833(a)(1)(A) of the Act (that is, through an HCPP) the rules of § 417.528 of this chapter apply.

(3) *Special rules for Oregon.* For the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, there are the following special rules:

(i) The limitations of paragraph (c)(2) of this section do not apply if the liability insurer pays within 120 days after the earlier of the following dates:

(A) The date the hospital files a claim with the insurer or places a lien against a potential liability settlement.

(B) The date the services were provided or, in the case of inpatient hospital services, the date of discharge.

(ii) If the liability insurer does not pay within the 120-day period, the hospital must withdraw its claim or lien and comply with the limitations imposed by paragraph (c)(2) of this section.

Subpart E—Limitations on Payment for Services Furnished to End-Stage Renal Disease Beneficiaries Who Are Also Covered Under an Employer Group Health Plan

§ 411.60 Scope and definitions.

(a) *Scope.* This Subpart E sets forth the policies and procedures for payment for services furnished to beneficiaries who are entitled to Medicare solely on the basis of end-stage renal disease (ESRD) and who are also covered under an employer group health plan.

(b) *Definitions.* As used in this Subpart E—

"Employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions, the governments of the United States, the individual States, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the District of Columbia, and the agencies, instrumentalities, and political subdivisions of these governments.

"Employer group health plan" or *"employer plan"* means a group health plan that—

(1) Is of, or contributed to by, an employer; and

(2) Provides medical care directly or through other methods such as insurance or reimbursement, to current or former employees, or to current or former employees and their families.

It includes a plan that is under the auspices of an employer who makes no financial contribution, a so-called "employee-pay-all" plan.

"Monthly capitation payment" means a comprehensive monthly payment that covers all physician services associated with the continuing medical management of a maintenance dialysis patient who dialyzes at home or as an outpatient in an approved ESRD facility.

§ 411.62 Medicare benefits secondary to employer group health plan benefits.

(a) *General rules.* (1) Medicare benefits are secondary to benefits payable under an employer plan, for services furnished to an ESRD beneficiary during a period of up to 12 consecutive months as specified in paragraphs (b) and (c) of this section.

(2) If the individual becomes entitled to Medicare after the 12-month period has begun, as set forth in paragraph (c) of this section, Medicare benefits are secondary only for that portion of the 12-month period that begins with the month of entitlement.

(3) During the period in which Medicare benefits are secondary, the following rules apply:

(i) Medicare makes primary payments only for Medicare covered services that are—

(A) Furnished to Medicare beneficiaries who are not enrolled in the employer plan;

(B) Not covered under the employer plan; or

(C) Covered under the employer plan but not available to particular enrollees

because they have exhausted their benefits.

(ii) Medicare makes secondary payments, within the limits specified in §§ 411.32 and 411.33, to supplement the amount paid by the employer plan if that plan pays only a portion of the charge for the services.

(b) *Beginning of 12-month period.* The period of 12 consecutive months specified by law begins with the earlier of the following months:

(1) The month in which the individual initiates a regular course of renal dialysis.

(2) In the case of an individual who receives a kidney transplant, the first month in which the individual could become entitled to Medicare if he or she filed a timely application, that is, the earliest of the following:

(i) The month in which the transplant is performed.

(ii) The month in which the individual is admitted to the hospital in preparation for, or anticipation of, a transplant that is performed within the next two months.

(iii) The second month before the month the transplant is performed, if performed more than 2 months after admission.

(c) *Beginning of period in which Medicare is secondary payer.* The period in which Medicare is secondary payer begins later than the beginning of the 12-month period (and therefore lasts less than 12 months) if the individual—

(1) Is subject to the 3-month waiting period for individuals who initiate renal dialysis but do not begin training for self-dialysis during the first 3 months of dialysis; or

(2) Files the application for Medicare entitlement more than 12 months after the month in which a 12-month period begins. (Under the Act, an application may not be retroactive for more than 12 months).

(d) *Examples.* The following examples illustrate how to determine, in different situations, the number of months during which Medicare is secondary payer.

(1) *Individual filed a timely application and became entitled without a waiting period.* In October 1981, John began a regular course of dialysis and filed an application for Medicare. In December 1981, John began training for self-dialysis. Since John initiated self-dialysis training during the first 3 months of dialysis, he is exempt from the waiting period and becomes entitled as of October 1981, the first month of dialysis. In this situation, the month of entitlement coincides with the beginning of the 12-month period and Medicare is secondary payer during the entire period.

(2) *Individual filed a timely application and became entitled to Medicare after a waiting period.* (i) Janice started a regular course of renal dialysis in October 1981 and filed an application in the same month. The 12-month period begins with October 1981, but the 3-month waiting period doesn't end until December 1981. The month of entitlement for Janice is January 1982. Medicare is secondary payer from January through September 1982.

(ii) Peter started a regular course of dialysis in January 1982, and was hospitalized and received a kidney transplant in March 1982. The 12-month period begins with January 1982. The kidney transplant cuts short the dialysis waiting period so that Peter becomes entitled in March 1982. Medicare is secondary payer from March through December 1982.

(3) *Individual did not file a timely application.* In January 1982, Katherine suffered kidney failure and received a kidney transplant but did not apply for Medicare until July, 1983. Since the application is retroactive for only 12 months, Katherine becomes entitled to Medicare in July 1982. The 12-month period begins in January 1982, the month in which Katherine could have been entitled if she had filed a timely application. Medicare is secondary payer from July through December 1982.

(e) *Effect of changed basis for Medicare entitlement.* If the basis for an individual's entitlement to Medicare changes from ESRD to age 65 or disability, the 12-month period terminates with the month before the month in which the change is effective.

(f) *Determinations for subsequent periods of ESRD entitlement.* If an individual has more than one period of entitlement based solely on ESRD, a period during which Medicare may be secondary payer will be determined for each period of entitlement, in accordance with this section.

§ 411.65 Basis for conditional Medicare payments.

(a) *General rule.*[2] Except as specified in paragraph (b) of this section, the Medicare intermediary or carrier may make a conditional payment if—

(1) The beneficiary, the provider, or the supplier that has accepted assignment files a proper claim under the employer plan and the plan denies the claim in whole or in part; or

(2) The beneficiary, because of physical or mental incapacity, fails to file a proper claim.

[2] For services furnished before January 21, 1988, conditional Medicare payments were made unless HCFA determined that the employer plan would pay the particular claims as promptly as Medicare.

(b) *Exception.* Medicare does not make conditional primary payments under either of the following circumstances:

(1) The claim is denied for one of the following reasons:

(i) It is alleged that the employer plan is secondary to Medicare.

(ii) The employer plan limits its payments when the individual is entitled to Medicare.

(iii) Failure to file a proper claim if that failure is for any reason other than the physical or mental incapacity of the beneficiary.

(2) The employer plan fails to furnish information requested by HCFA and necessary to determine whether the employer plan is primary to Medicare.

Subpart F—Limitations on Payment for Services Furnished to Employed Aged and Aged Spouses of Employed Individuals Who Are Also Covered Under an Employer Group Health Plan

§ 411.70 General provisions.

(a) *Basis and scope.* This Subpart F implements section 1862(b)(3) of the Act. It sets forth the limitations that apply to Medicare payment for services furnished to employed aged and to aged spouses of employed individuals who are covered under an employer group health plan of an employer who employs at least 20 employees.

(b) *Applicability.* The rules of this subpart apply only to services furnished after December 1982.

(c) *Determination of "aged".* (1) An individual attains a particular age on the day preceding the anniversary of his or her birth.

(2) The period during which an individual is considered to be "aged" begins on the first day of the month in which that individual attains age 65.

(3) For services furnished before May 1986, the period during which an individual is considered "aged" ends as follows:

(i) For services furnished before July 18, 1984, it ends on the last day of the month in which the individual attains age 70.

(ii) For services furnished between July 18, 1984 and April 30, 1986, it ends on the last day of the month *before* the month the individual attains age 70.

(4) For services furnished on or after May 1, 1986, the period has no upper age limit.

(d) *Definitions.* As used in this subpart—

"*Employed*" encompasses not only employees but also, subject to the provisions of paragraph (f) of this section, self-employed persons such as

consultants, owners of businesses, and directors of corporations, and members of the clergy and religious orders who are paid for their services by a religious body or other entity.

"Employer" means, in addition to individuals and organizations engaged in a trade or business, other entities exempt from income tax such as religious, charitable, and educational institutions, the governments of the United States, the individual States, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the District of Columbia, and the agencies, instrumentalities and political subdivisions of these governments.

"*Employer group health plan*" or "*employer plan*" means a group health plan that provides medical care, directly or through other methods such as insurance or reimbursement, to current or former employees or to employees and their families, and meets one of the following conditions:

(1) Is of, or contributed to by, a single employer of at least 20 employees.

(2) Is a multiemployer group health plan that includes at least one employer of 20 or more employees.

The term includes a plan that is under the auspices of an employer who makes no financial contribution, a so-called "employee-pay-all" plan.

"*Multiemployer group health plan*" or "*multiemployer plan*" means a "multiple employer plan", which is a plan sponsored by more than one employer, or a "multi-employer plan", which is a plan sponsored jointly by employers and unions.

(e) *Referral of cases to the Equal Employment Opportunity Commission (EEOC).* HCFA refers to the EEOC cases of apparent noncompliance with the Age Discrimination in Employment Act (29 U.S.C. 623). That Act requires employers to provide the same health benefits under the same conditions, to aged employees and their spouses as they provide to younger employees and their spouses.

(f) *Special rules applicable to the self-employed and to members of religious orders.* (1) A self-employed individual is considered "employed" during a particular tax year only if, during the preceding tax year, the individual's net earnings, from work related to the employer that offers the group health coverage, are at least equal to the amount specified in section 211(b)(2) of the Act, which defines "self-employment income" for social security purposes.

(2) A member of a religious order is considered employed if the religious order pays FICA taxes on behalf of that member.

§ 411.72 Medicare benefits secondary to employer group health plan benefits.

(a) *Conditions the individual must meet.* Medicare Part A and Part B benefits are secondary to benefits payable by an employer plan for services furnished during any month in which the individual—

(1) Is aged:

(2) Is entitled to Medicare Part A benefits under § 406.10 of this chapter;

(3) Is not entitled, and could not upon filing an application become entitled, to Medicare on the basis of end-stage renal disease as provided in § 406.13 of this chapter; and

(4) Meets one of the following conditions:

(i) Is employed and covered, by reason of that employment, under an employer plan.

(ii) Is the aged spouse 3 of an employed individual who—

(A) For services furnished before January 1985 was, at the time the services were furnished, age 65 through 69;

(B) For services furnished from January 1, 1985 through April 30, 1986 was, at the time the services were furnished, any age through 69; or

(C) For services furnished after April 30, 1986 was, at the time the services were furnished, any age.

(b) *Exception for multiemployer plans.* If a multiemployer plan can identify particular enrollees as employees of an employer of fewer than 20 employees, Medicare is primary for those enrollees and their spouses.

(c) *Refusal to accept employer plan coverage.* An employee or spouse may refuse the health plan offered by the employer. If the employee or spouse refuses the plan—

(1) Medicare is primary payer for that individual; and

(2) The plan may not offer that individual coverage complementary to Medicare.

(d) *Coverage of reemployed retiree or annuitant.* A reemployed retiree or annuitant who is covered by an employer group health plan is considered covered "by reason of employment".

if the employer provides the same group coverage to retirees as to other employees in the same category. This rule applies even if—

(1) The plan is the same plan that previously provided coverage to that individual when he was a retiree or annuitant; or

(2) The premiums for the plan are paid from a retirement pension or fund.

(e) *Secondary payments.* Medicare pays secondary benefits, within the limitations specified in §§ 411.32 and 411.33, to supplement the primary benefits paid by the employer plan if that plan pays only a portion of the charge for the services.

(f) *Disabled aged individuals who are considered employed.* (1) For services furnished on or after November 12, 1985, and before July 17, 1987, a disabled, nonworking individual age 65 or older was considered employed if he or she—

(i) Was receiving, from an employer, disability payments that were subject to tax under the Federal Insurance Contributions Act (FICA); and

(ii) For the month before the month of attainment of age 65, was not entitled to disability benefits under title II of the Act and 20 CFR 404.315 of the SSA regulations.

(2) For services furnished on or after July 17, 1987, an indivudual is considered employed if he or she receives, from an employer, disability benefits that are subject to tax under FICA, even if he or she was entitled to Social Security disability benefits before attaining age 65.

§ 411.75 Basis for Medicare primary payments.

(a) *General rule.* Medicare makes primary payments only for Medicare covered services that are—

(1) Furnished to employed individuals or spouses who are not enrolled in the employer plan;

(2) Not covered for any of the employed individuals or spouses who are enrolled in that plan; or

(3) Covered under the plan but not available to particular employed individuals or spouses because they have exhausted their benefits.

(b) *Conditional primary payments: Basic rule.* Except as provided in paragraph (c) of this section. Medicare may make a conditional primary payment if—

(1) The beneficiary, the provider, or the supplier that has accepted assignment has filed a proper claim under the employer plan and the plan has denied the claim in whole or in part; or

(2) The beneficiary, because of physicial or mental incapacity, failed to file proper claim.

(c) *Conditional primary payments: Exceptions.* Medicare does not make conditional primary payments under either of the following circumstances:

(1) The claim is denied for one of the following reasons:

(i) It is alleged that the employer plan is secondary to Medicare.

(ii) The plan limits its payments when the individual is entitled to Medicare.

(iii) The services are covered by the employer plan for younger employees and spouses but not for employees and spouses age 65 or over.

(iv) Failure to file a proper claim if that failure is for any reason other than physical or mental incapacity of the beneficiary.

(2) The employer plan fails to furnish information requested by HCFA and necessary to determine whether the employer plan is primary to Medicare.

Subparts G–J—[Reserved]

Subpart K—Payment for Certain Excluded Services

§ 411.400 Payment for custodial care and services not reasonable and necessary.

(a) *Conditions for payment.* Notwithstanding the exclusions set forth in § 411.15 (g) and (k). Medicare pays for "custodial care" and "services not reasonable and necessary" if the following conditions are met:

(1) The services were funished by a provider or by a practitioner or supplier that had accepted assignment of benefits for those services.

(2) Neither the beneficiary nor the provider, practitioner, or supplier knew, or could reasonably have been expected to know, that the services were excluded from coverage under § 411.15 (g) or (k).

(b) *Time limits on payment.*—(1) *Basic rule.* Except as provided in paragraph (b)(2) of this section, payment may not be made for inpatient hospital care, posthospital SNF care, or home health services furnished after the earlier of the following:

(i) The day on which the beneficiary has been determined, under § 411.404, to have knowledge, actual or imputed, that the services were excluded from coverage by reason of § 411.15(g) or § 411.15(k).

(ii) The day on which the provider has been determined, under § 411.406 to have knowledge, actual or imputed, that the services are excluded from coverage by reason of § 411.15(g) or § 411.15(k).

(2) *Exception.* Payment may be made for services furnished during the first day after the limit established in paragraph (b)(1) of this section, if the PRO or the intermediary determines that the additional period of one day is necessary for planning post-discharge care. It the PRO or the intermediary determines that yet another day is necessary for planning post-discharge care, payment may be made for services furnished during the second day after the limit established in paragraph (b)(1) of this section.

§ 411.402 Indemnification of beneficiary.

(a) *Conditions for indemnification.* If Medicare payment is precluded because the conditions of § 411.400(a)(2) are not met. Medicare indemnifies the beneficiary (and recovers from the provider, practitioner, or supplier), if the following conditions are met:

(1) The beneficiary paid the provider, practitioner, or supplier some or all of the charges for the excluded services.

(2) The beneficiary did not know and could not reasonably have been expected to know that the services were not covered.

(3) The provider, practitioner, or supplier knew, or could reasonably have been expected to know that the services were not covered.

(4) The beneficiary files a proper request for indemnification before the end of the sixth month after whichever of the following is later:

(i) The month is which the beneficiary paid the provider, practitioner, or supplier.

(ii) The month in which the intermediary or carrier notified the beneficiary (or someone on his or her behalf) that the beneficiary would not be liable for the services.

For good cause shown by the beneficiary, the 6-month period may be extended.

(b) *Amount of indemnification.*[4] The amount of indemnification is the total that the beneficiary paid the provider, practitioner, or supplier.

(c) *Effect of indemnification.* The amount of indemnification is considered an overpayment to the provider, practitioner, or supplier, and as such is recoverable under this part or in accordance with other applicable provisions of law.

§ 411.404 Criteria for determining that a beneficiary knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A beneficiary who receives services that constitute custodial care under § 411.15(g) or that are not reasonable and necessary under § 411.15(k), is considered to have known that the services were not covered if the criteria of paragraphs (b) and (c) of this section are met.

(b) *Written notice.* Written notice has been given to the beneficiary, or to someone acting on his or her behalf, that the services were not covered because they did not meet Medicare coverage guidelines. A notice concerning similar or reasonable comparable services furnished on a previous occasion also meets this criterion. For example, program payment may not be made for the treatment of obesity, no matter what form the treatment may take. After the beneficiary who is treated for obesity with dietary control is informed in writing that Medicare will not pay for treatment of obesity, he or she will be presumed to know that there will be no Medicare payment for any form of subsequent treatment of this condition, including use of a combination of exercise, machine treatment, diet, and medication.

(c) *Source of notice.* The notice was given by one of the following:

(1) The PRO, intermediary, or carrier.

(2) The group or committee responsible for utilization review for the provider that furnished the services.

(3) The provider, practitioner, or supplier that furnished the service.

§ 411.406 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A provider, practitioner, or supplier that furnished services which constitute custodial care under § 411.15(g) or that are not reasonable and necessary under § 411.15(k) is considered to have known that the services were not covered if any one of the conditions specified in paragraphs (b) through (e) of this section is met.

(b) *Notice from the PRO, intermediary or carrier.* The PRO, intermediary, or carrier had informed the provider, practitioner, or supplier that the services furnished were not covered, or that similar or reasonably comparable services were not covered.

(c) *Notice from the utilization review committee or the beneficiary's attending phyician.* The utilization review group or committee for the provider or the beneficiary's attending physician had informed the provider that these services were not covered.

(d) *Notice from the provider, practitioner, or supplier to the beneficiary.* Before the services were furnished, the provider, practitioner or supplier informed the beneficiary that—

(1) The services were not covered; or

(2) The beneficiary no longer needed covered services.

(e) *Knowledge based on experience, actual notice, or constructive notice.* It is clear that the provider, practitioner, or supplier could have been expected to

[4] For services furnished before 1988, the indemnification amount was reduced by any deductible or coinsurance amounts that would have been applied if the services had been covered.

have known that the services were excluded from coverage on the basis of—

(1) Its receipt of HCFA notices, including manual issuances, bulletins or other written guides or directives from intermediaries, carriers or PROs, including notification of PRO screening criteria specific to the condition of the beneficiary for whom the furnished services are at issue and of medical procedures subject to preadmission review by PRO; or

(2) Its knowledge of what are considered acceptable standards of practice by the local medical community.

III. Part 489 is amended as follows:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1864, 1866 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc and 1395hh), unless otherwise noted.

2. Section 489.20 is amended as set forth below:

§ 489.20 [Amended]

a. The undesignated introductory statement is revised to read:

"The provider agrees to the following:"

b. Periods are substituted for the semicolons at the end of paragraphs (a) through (c) and for the "; and" at the end of paragraph (d).

c. New paragraphs (f) through (j) are added to read as follows:

(f) To maintain a system that, during the admission process, identifies any primary payers other than Medicare, so that incorrect billing and Medicare overpayments can be prevented.

(g) To bill other primary payers before billing Medicare except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section.

(h) If the provider receives payment for the same services from Medicare and another payer that is primary to Medicare, to reimburse Medicare any overpaid amount within 60 days.

(i) If the provider receives, from a payer that is primary to Medicare, a payment that is reduced because the provider failed to file a proper claim—

(1) To bill Medicare for an amount no greater than would have been payable as secondary payment if the primary insurer's payment had been based on a proper claim; and

(2) To charge the beneficiary only: (i) The amount it would have been entitled to charge if it had filed a proper claim and received payment based on such a claim; and

(ii) An amount equal to any third party payment reduction attributable to failure to file a proper claim, but only if the provider can show that—

(A) It failed to file a proper claim solely because the beneficiary, for any reason other than mental or physical incapacity, failed to give the provider the necessary information; or

(B) The beneficiary, who was responsible for filing a proper claim, failed to do so for any reason other than mental or physical incapacity.

(j) In the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, hospitals may bill liability insurers first. However, if the liability insurer does not pay "promptly", as defined in § 411.50 of this chapter, the hospital must withdraw its claim or lien and bill Medicare for covered services.

3. A new § 489.34 is added, and the table of contents is amended to reflect the addition:

§ 489.34 Allowable charges: Hospitals participating in State reimbursement control systems or demonstration projects.

A hospital receiving payment for a covered hospital stay under either a State reimbursement control system approved under 1886(c) of the Act or a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)) and that would otherwise be subject to the prospective payment system set forth in Part 412 of this chapter may charge a beneficiary for noncovered services as follows:

(a) For the custodial care and medically unnecessary services described in § 412.42(c) of this chapter, after the conditions of § 412.42(c)(1) through (c)(4) are met; and

(b) For all other services in accordance with the applicable rules of this Subpart C.

IV. Technical Amendment

§ 412.42 [Amended]

In paragraph (c) of § 412.42, "§ 405.310(g)" is changed to "§ 411.15(g)", and "§ 405.310(k)" is changed to "§ 411.15(k)".

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; and No. 13.773, Medicare—Hospital Insurance.)

Dated: September 22, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: September 25, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89–23902 Filed 10–10–89; 8:45 am]

BILLING CODE 4120–01–M

Federal Register

Wednesday
October 11, 1989

Part III

Congressional Budget Office

Final Sequestration Report for Fiscal Year 1990 to Office of Management and Budget and Congress; Transmittal

CONGRESSIONAL BUDGET OFFICE

Final Sequestration Report for Fiscal Year 1990 to Office of Management and Budget and Congress; Transmittal

AGENCY: Congressional Budget Office.

ACTION: Report transmittal.

SUMMARY: This notice transmits the final sequestration report for Fiscal Year 1990 to the Office of Management and Budget and the Congress in accordance with the procedures of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Public Law 100–119.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

BILLING CODE 1450–01–M

[FR Doc. 89–24220 Filed 10–10–89; 3:16 pm]

BILLING CODE 1450–01–C

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1990

A Congressional Budget Office
Report to the Congress
and the Office of Management and Budget

October 10, 1989

CONTENTS

NOTES

All years referred to in this report are fiscal years, unless otherwise noted.

Details in the text and tables of this report may not add to totals because of rounding.

The Balanced Budget and Emergency Deficit Control Act of 1985 (commonly known as Gramm-Rudman-Hollings) is referred to in this report more briefly as the Balanced Budget Act.

The source for all data in this report is the Congressional Budget Office, unless otherwise noted.

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

October 10, 1989

Honorable Richard G. Darman
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Darman:

I herewith submit to you my *Final Sequestration Report for Fiscal Year 1990*, in accordance with the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The Congressional Budget Office estimates that laws enacted and regulations promulgated since August have reduced the projected 1990 deficit by $0.2 billion. Under the same economic and technical assumptions used in CBO's initial sequestration report, the projected 1990 deficit now stands at $141.3 billion, which exceeds the Balanced Budget Act target by $41.3 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide you with any assistance that you may require in preparing your own final sequestration report.

Sincerely yours,

Robert D. Reischauer
Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

October 10, 1989

Honorable Dan Quayle
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I herewith submit to the Congress my *Final Sequestration Report for Fiscal Year 1990*, in accordance with the requirements of the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The act specifies a 1990 deficit target of $100 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on our updated economic and technical assumptions and on budgetary policies in effect on October 6, 1989, we estimate that the budget deficit in fiscal year 1990 will reach $141.3 billion, which exceeds the target by $41.3 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the final report by the Director of the Office of Management and Budget.

Sincerely yours,

Robert D. Reischauer
Director

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

October 10, 1989

Honorable Thomas S. Foley
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I herewith submit to the Congress my *Final Sequestration Report for Fiscal Year 1990*, in accordance with the requirements of the Balanced Budget and Emergency Control Act of 1985 (Public Law 99-177) as amended by the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (Public Law 100-119).

The act specifies a 1990 deficit target of $100 billion. An across-the-board reduction of budgetary resources will be triggered if the deficit estimate made by the Office of Management and Budget exceeds the target by more than $10 billion. Based on our updated economic and technical assumptions and on budgetary policies in effect on October 6, 1989, we estimate that the budget deficit in fiscal year 1990 will reach $141.3 billion, which exceeds the target by $41.3 billion.

This report presents the assumptions underlying CBO's deficit estimate, and calculates the amounts and percentages by which various budgetary resources would need to be sequestered to reduce the deficit to the target level under these assumptions.

I would be pleased to provide the Congress with any assistance it may require in responding to this report, or to the final report by the Director of the Office of Management and Budget.

Sincerely yours,

Robert D. Reischauer
Director

FINAL SEQUESTRATION REPORT FOR FISCAL YEAR 1990

A CONGRESSIONAL BUDGET OFFICE REPORT TO THE CONGRESS AND THE OFFICE OF MANAGEMENT AND BUDGET

October 10, 1989

SUMMARY

On August 21, 1989, the Congressional Budget Office (CBO) transmitted its initial sequestration report for fiscal year 1990 to the Office of Management and Budget (OMB) and the Congress. The report was published in the *Federal Register* on August 22 (pages 34908-34968). Following the specifications provided by the Balanced Budget Act, CBO projected a fiscal year 1990 federal budget deficit of $141.5 billion.

CBO now estimates that laws enacted and regulations promulgated since August have reduced projected 1990 spending by $0.2 billion. The projected 1990 deficit is $141.3 billion--$41.3 billion above the statutory target of $100 billion. If CBO's estimates were controlling, and if no further changes were made in taxing and spending policies, across-the-board reductions of 10.7 percent in defense and 15.6 percent in nondefense programs would be required to achieve the target.

On October 16, 1989, OMB will issue a final independent estimate of the projected deficit and will determine the necessity of across-the-board spending cuts. OMB's final estimate is likely to differ little from its initial projection of $116 billion. In that case, the President will issue a final sequestration order permanently canceling the budgetary resources necessary to reduce 1990 outlays by about $16 billion.

The Congress is currently considering appropriation and reconciliation legislation that could, using OMB estimates, reduce the projected 1990 deficit below $110 billion--the level at which sequestration is triggered. While enactment of a reconciliation bill after October 16 would not automatically cancel a sequestration order, a provision restoring the sequestered funds could be included in the reconciliation bill, as it was in the Omnibus Budget Reconciliation Act of 1987.

INTRODUCTION

The Balanced Budget Act became law in December 1985 and established a series of annual budget deficit targets for the federal government that would lead to a balanced budget over five years. As amended in 1987, the Balanced Budget Act eased these annual targets and delayed the attainment of a balanced budget by two years, to fiscal year 1993. The deficit targets specified by the act are (in billions of dollars):

Fiscal Year	Maximum Deficit	Sequestration Threshold
1990	100	110
1991	64	74
1992	28	38
1993	0	0

For the years 1989 through 1992, the deficit projection may exceed the target by as much as $10 billion. If the Administration's deficit projection exceeds the target by more than this $10 billion margin, the act provides a procedure--known as sequestration--to cut federal spending automatically. For 1993, sequestration would be triggered if any deficit is estimated in the Administration's October 15, 1992, report.

Sequestration involves the permanent cancellation of new budget authority and other authority to obligate and expend funds, except for special and trust funds, where the sequestered amounts of spending authority remain in the funds. The sequestration of budgetary resources is designed to achieve outlay reductions sufficient to reach the annual deficit targets.

The Balanced Budget Act specifies roles for the Congressional Budget Office, the Office of Management and Budget, and the Comptroller General. CBO's role is to advise OMB and the Congress, while the Director of OMB must determine whether or not sequestration is necessary and, if so, the amount of reductions in budgetary resources and outlays

TABLE 1. CBO ESTIMATES OF BUDGET BASELINE TOTALS FOR FISCAL YEAR 1990
(In billions of dollars)

Budget Aggregates	Baseline			Differences		
	As of January 1	As of August 15	As of October 6	January-August	August-October	January-October
Revenues	1,070.8	1,071.4	1,071.4	0.6	0.0	0.6
Outlays	1,206.9	1,213.0	1,212.8	6.1	-0.2	5.9
Deficit	136.0	141.5	141.3	5.5	-0.2	5.3

required to achieve the deficit target. Each year, CBO and OMB are required to prepare independently two sets of sequestration reports. The CBO reports, which are transmitted to the Director of OMB and to the Congress, are a benchmark against which the Congress and others may assess the OMB reports. The OMB reports, which are made to the President and to the Congress, provide the basis for sequestration orders to be issued by the President. The timetable for the agency reports and sequestration orders is shown on page 3.

The initial CBO and OMB sequestration reports are based on laws that are enacted and regulations that are final at the time of a common snapshot date, August 15. The revised reports, however, must be based on laws enacted and regulations promulgated by the latest possible date before they are issued. This report has used a snapshot date of October 6, 1989. Because the snapshot date may be different in the two agencies' final reports, some legislation and regulations reflected in one report may not be reflected in the other.

The role of the Comptroller General under the amended Balanced Budget Act is threefold: to prepare a report each year to the Congress and the President that certifies whether the final sequestration order issued by the President complies with the requirements of the Balanced Budget Act; to assess the compliance and accuracy of the OMB sequestration reports; and to make recommendations for improving sequestration procedures. The Comptroller's report is due on November 15.

This document is the final CBO report for 1990. The report:

- Estimates budget baseline levels as of January 1, 1989; August 15, 1989; and October 6, 1989; the amount of net deficit change that has occurred between those dates; and the outlay reductions required for 1990;
- Provides CBO economic assumptions used for the baseline estimates; and
- Calculates the amounts and percentages by which various budgetary resources must be sequestered in order to achieve the required outlay reductions.

BUDGET BASELINE TOTALS

The CBO budget baseline estimates of total revenues, outlays, and the deficit for fiscal year 1990 are shown in Table 1. Separate budget baseline estimates are provided for laws and regulations in effect on January 1, 1989; August 15, 1989; and October 6, 1989. The economic and technical assumptions used for these budget baseline estimates are identical. The differences between the estimates, therefore, result only from laws enacted and final regulations promulgated since January 1.

These estimates are made in accordance with the specifications set forth in the Balanced Budget Act. CBO's October 6 baseline includes the enacted spending amounts from the energy and water development appropriation for fiscal year 1990, which was signed by President Bush on September 29. For discretionary spending controlled by the 12 other appropriation bills, the baseline estimates are based on the 1989 appropriation, with an adjustment for inflation and increased pay costs. The Balanced Budget Act provides that, after October 1, the inflation factor for 70 percent of personnel costs must reflect any pay raise established by law for the new fiscal year. The updated baseline therefore incorporates a 3.6 percent pay raise in January 1990 for military and civilian employees, as announced by the President on August 28 pursuant to Title V of the United States Code. The inflation factor is increased to allow for higher agency retirement costs and for pay absorption in the

previous fiscal year, and is reduced to account for pay absorption in the upcoming fiscal year.

For nonappropriated spending accounts and revenues, the baseline estimates assume that current laws and regulations will continue unchanged, and that expiring provisions of law will terminate as scheduled. The Balanced Budget Act, however, provides an exception to the general treatment of expiring provisions in the cases of excise taxes dedicated to trust funds, Commodity Credit Corporation agricultural price support programs, and contract authority for transportation trust funds. As required by the act, the budget baseline estimates include the receipts and outlays of the Social Security trust funds, even though they are legally off-budget.

The Balanced Budget Act provides that asset sales and loan prepayments shall neither be included in the budget baseline estimates nor count toward any net deficit reduction. The act makes an exception for asset sales and loan prepayments that are routine and ongoing according to the practices followed in fiscal year 1986 and for asset sales mandated by law as of September 17, 1987. The budget baseline estimates may not, however, assume or reflect an acceleration of routine asset sales or loan prepayments. The CBO baseline therefore excludes $0.5 billion in prepayments of Rural Electrification Administration loans, which are expected in fiscal year 1990.

The act also prohibits the inclusion of savings resulting from the transfer of outlays, receipts, or revenues from one year to an adjacent year, except for certain types of transfers identified in law. No such savings apply to fiscal year 1990. The prohibition of timing shifts does not apply to the advancing of certain farm deficiency payments into 1989 or to the shifting of the October 1, 1989, military pay date to September 29, because these actions did not result from new laws or regulations.

Snapshot date for initial CBO and OMB reports	August 15
Initial CBO report	August 21[a]
Initial OMB report	August 25
Initial sequestration order	August 25
Revised CBO report	October 10
Revised OMB report	October 16[a]
Final sequestration order	October 16[a]

a. The statutory dates for the initial CBO report and the revised OMB report are August 20 and October 15, respectively; both dates fall on Sundays in 1989. The reports will therefore be submitted on the following Mondays.

Under these specifications, CBO's estimate as of October 6, 1989, of the budget baseline deficit for 1990 is $141.3 billion.

Laws enacted and regulations promulgated since August 15 have reduced the projected 1990 deficit by $0.2 billion, as shown in Table 2. The energy and water development appropriation has increased outlays by $0.8 billion, primarily for atomic energy defense activities. Disaster assistance for the victims of Hurricane Hugo, included in the resolution providing continuing appropriations for fiscal year 1990, adds another $0.5 billion. Incorporation of the final pay raise amount reduces projected spending by $0.8 billion, because the actual increase is less than what was previously assumed. New regulations lower Medicare outlays by $0.6 billion. Other legislation, as well as the resulting change in debt service costs, reduces the deficit by $0.1 billion.

TABLE 2. CBO ESTIMATES OF DEFICIT CHANGES FOR FISCAL YEAR 1990, AUGUST 15 THROUGH OCTOBER 6, 1989
(In billions of dollars)

Budget Baseline Deficit as of August 15, 1989	141.5
Effect of New Laws and Regulations	
Enacted Legislation	
Continuing Appropriations for Fiscal Year 1990 (P.L. 101-100)	0.5
Energy and Water Development Appropriation (P.L. 101-101)	0.8
Performance Management and Recognition System Reauthorization (P.L. 101-103)	-0.1
Final Medicare Regulations	-0.6
Establishment of Fiscal Year 1990 Pay Raise	-0.8
Debt Service	a
Total, New Laws and Regulations	-0.2
Budget Baseline Deficit as of October 6, 1989	141.3

a. Less than $50 million.

ECONOMIC ASSUMPTIONS

The principal economic assumptions underlying the CBO budget baseline estimates for fiscal year 1990 are shown in Table 3. The Balanced Budget Act requires the Directors of OMB and CBO to estimate the rate of real economic growth for the fiscal year covered by their reports, for each quarter of the fiscal year, and for the last two quarters of the preceding fiscal year. If either OMB or CBO projects real economic growth to be less than zero for any two consecutive quarters, or if the Department of Commerce reports actual real growth to have been less than 1 percent for two consecutive quarters, the Congress and the President may suspend many of the provisions of the act. Table 3 provides the CBO estimates for the rate of real economic growth and other economic variables for fiscal year 1990. As discussed in CBO's initial report, CBO does not project real economic growth to be less than zero in any quarter during fiscal year 1990.

TABLE 3. CBO ECONOMIC ASSUMPTIONS FOR FISCAL YEAR 1990

Gross National Product:	
Billions of current dollars	5,463
Percent change, year over year	6.3
Billions of constant (1982) dollars	4,158
Percent change, year over year	1.9
GNP Implicit Price Deflator (Percent change, year over year)	4.4
CPI-U (Percent change, year over year)	4.9
Civilian Unemployment Rate (Percent, fiscal year average)	5.5
Interest Rates (Fiscal year average):	
91-day Treasury bills	7.3
10-year Treasury notes	8.2

REQUIRED OUTLAY REDUCTIONS

Sequestration of budgetary resources will be necessary for 1990 if the deficit estimated by OMB exceeds the $100 billion target by more than the $10 billion margin. Once sequestration is triggered, budget outlays must be reduced by the entire amount by which the deficit exceeds $100 billion. One-half of the required outlay reduction must be taken from defense programs (budget accounts in the national defense function, 050, excluding the Federal Emergency Management Agency) and the other half from nondefense programs. CBO's deficit projection of $141.3 billion would call for outlay reductions of $41.3 billion in 1990. Table 4 shows how budget outlays in defense and nondefense programs would be cut back to achieve this reduction.

TABLE 4. CBO SEQUESTRATION CALCULATIONS FOR FISCAL YEAR 1990 (In millions of dollars)

	Defense Programs	Nondefense Programs
Total Required Outlay Reductions	20,652	20,652
Savings from Eliminating Automatic Spending Increases	0	47
Savings from the Application of Special Rules:		
Guaranteed student loans	0	26
Foster care and adoption assistance	0	4
Medicare	0	1,776
Other health programs	0	204
Remaining Reductions Required	20,652	18,595
Estimated Sequestration Outlay Base	193,821	119,525[a]
Uniform Reduction Percentage	10.7	15.6

a. Includes $6,274 million in estimated 1991 outlays for the Commodity Credit Corporation that can be affected by a 1990 sequestration (see discussion of special rule for CCC). Also includes an estimated $1,943 million in outlays from the spending of offsetting collections.

If sequestration is required, the law provides that the automatic spending increases in three programs--the National Wool Act, the special milk program, and vocational rehabilitation--be eliminated and the resulting savings be applied to the required reduction in outlays for nondefense programs. According to CBO estimates, only the vocational rehabilitation program will receive an automatic spending increase in fiscal year 1990; eliminating this increase would produce $47 million in outlay savings in 1990. The outlay savings to be obtained by applying four special rules are also credited to the required spending reductions in nondefense programs. These special rules are for guaranteed student loans, foster care and adoption assistance, Medicare, and certain health programs, and are described in a later section of this report. Applying the special rules to these programs would achieve $2 billion in outlay savings in 1990.

TABLE 5. COMPOSITION OF BASELINE OUTLAYS FOR FISCAL YEAR 1990

Category	Estimate (In billions of dollars)	Percentage of Total
Defense Programs [a]		
Subject to across-the-board reduction	193.8	16.0
Exempt from sequestration [b]	106.8	8.8
Subtotal, defense programs	300 6	24.8
Nondefense Programs		
Subject to sequestration:		
Certain programs with automatic spending increases [c]	1.6	0.1
Certain special rule programs [d]	128.4	10.6
Subject to across-the-board reduction [e]	113.3	9.3
Subtotal, subject to sequestration	243 2	20.1
Exempt from sequestration:		
Social Security	247.6	20.4
Federal Retirement, disability, and workers compensation	65.8	5.4
Earned income tax credit	4.1	0.3
Low-income programs [f]	83.0	6.8
Veterans compensation and pensions	15.0	1.2
State unemployment benefits	14.6	1.2
Offsetting receipts	-59.3	-4.9
Net interest payments	179.8	14.8
Other	117.9	9.7
Subtotal, exempt from sequestration	668.4	55.1
Subtotal, nondefense programs	911.7	75.2
Total	1,212.2	100.0

a. Budget function 050, excluding Federal Emergency Management Agency programs.
b. Outlays from obligated balances.
c. National Wool Act, special milk, and vocational rehabilitation programs.
d. Guaranteed student loans, foster care and adoption assistance, Medicare, veterans medical care, and other health programs.
e. Excludes 1991 outlays for the Commodity Credit Corporation.
f. Family Support payments, child nutrition, Medicaid, Food Stamps, Supplemental Security Income, the Women, Infants, and Children's program, Commodity Supplemental Food program, and Nutrition Assistance to Puerto Rico.

The outlay reductions of $20.7 billion in defense programs and the remaining reductions of $18.6 billion in nondefense programs must be taken as a uniform percentage of all sequesterable budgetary resources in each category. The uniform reduction percentages are computed from outlay estimates: the required outlay savings to be achieved through across-the-board reductions are divided by the total estimated outlays from sequesterable budgetary resources in each category. The resulting uniform reduction percentages are then applied to all of the sequesterable budgetary resources (budget authority, credit authority, and other spending authority) for defense and nondefense programs.

According to CBO estimates, the 1990 outlays associated with sequesterable budgetary resources for defense programs are $193 8 billion. From this base amount, $20.7 billion in across-the-board outlay reductions must be made. The uniform percentage to be applied to sequesterable defense budgetary resources is 10.7 percent, as shown in Table 4. The Balanced Budget Act allows the President to exempt military personnel spending from sequestration, which would reduce sequesterable outlays by about $75 billion; an exemption has not been issued this year. If the President had exempted military personnel spending from sequestration, the required reduction in other defense spending would have been 17.4 percent.

The 1990 outlays associated with budgetary resources for nondefense programs subject to across-the-board reduction are estimated to be $119.5 billion. To achieve $18.6 billion in nondefense outlay

reductions, a 15.6 percent across-the-board reduction in nondefense sequesterable resources is required.

Table 5 lists budget baseline outlays for 1990. Defense outlays total $300.6 billion, of which $193.8 billion is subject to sequestration. In defense programs, unlike nondefense programs, the law specifies that spending from unobligated balances is subject to sequestration. Since the President has decided not to exempt military personnel spending, the only defense outlays that are not subject to sequestration are those resulting from previously appropriated budget authority that has already been obligated.

Nondefense baseline outlays for 1990 total $911.7 billion. Of this amount, only $113 3 billion is subject to across-the-board reduction. An additional $6.3 billion in 1991 Commodity Credit Corporation (CCC) outlays is counted under Balanced Budget Act specifications; together, these amounts yield the nondefense outlay base of $119.5 billion shown in Table 4. As Table 5 shows, a large percentage of nondefense outlays is exempted by law from the sequestration process. Social Security benefits, net interest payments, certain low-income programs, most federal retirement and disability benefits, veterans compensation and pensions, and regular state unemployment insurance benefits account for the largest exemptions. Outlays from appropriations for nondefense programs made in previous years are also not subject to sequestration.

The calculations in this report generally assume that all nonexempt budgetary resources can be sequestered in order to produce outlay savings, including entitlement programs and other mandatory spending programs where the spending authority is not controlled through the annual appropriation process. An exception is made for the administrative expenses of the Postal Service. While more than $1 billion of budgetary resources of the Postal Service is sequesterable under CBO estimates, no outlay savings are attributed by CBO to this sequestration because the Administration appears to have no mechanism for enforcing a sequestration order on the Postal Service. The Congress is currently considering legislation that would remove the Postal Service from federal budget totals and exempt it from sequestration calculations.

AUTOMATIC SPENDING INCREASES

The three programs with automatic spending increases currently subject to sequestration by the Balanced Budget Act are listed in Table 6. The scheduled percentage increases are shown as well as the amount of estimated outlay savings to be gained by eliminating these increases. According to CBO, only the vocational rehabilitation program will receive an automatic spending increase in 1990.

TABLE 6. AUTOMATIC SPENDING INCREASES FOR FISCAL YEAR 1990 SUBJECT TO SEQUESTRATION

Program	Scheduled Increase (Percent)	Outlay Reduction (Millions of dollars)
National Wool Act	a	a
Special Milk Programs	b	b
Vocational Rehabilitation[c]	4.2	46.9
Total		46.9

a. No 1990 payment increase is expected for this program, based on declining wool support price levels in marketing year 1989.
b. Benefits are indexed to the producer price index for fresh processed milk. This index is not projected to increase between May 1989 and May 1990.
c. This program is indexed to the change in the consumer price index (CPI-U) from October of the previous year.

SPECIAL RULES

The Balanced Budget Act provides special rules for the sequestration of budgetary resources for certain federal programs. This section describes these special rules and their application to the 1990 sequestration calculations. The estimated outlay savings derived from the first four rules are shown separately in Table 4. Any outlay savings resulting from the remaining special rules are included in the amount to be obtained from the uniform percentage reductions.

Guaranteed Student Loan Program

The Balanced Budget Act requires two changes in the guaranteed student loan (GSL) program to occur automatically under sequestration. First, the statutory factor for calculating the quarterly special allowance payments to lenders will be reduced by the lesser of 0.40 percentage point or the amount by which the statutory factor exceeds 3 percent for the first four quarters after the loan is made. Under the current program, the reduction will be 0 25 percent-

age point. Second, a student's origination fee will increase by 0.50 percentage point. In both cases, sequestration affects only GSL loans disbursed during the applicable fiscal year, but after the order is issued. For 1990, these changes are estimated by CBO to reduce outlays by $26 million.

Foster Care and Adoption Assistance Programs

The Balanced Budget Act limits the amount to be sequestered in the foster care and adoption assistance programs to increases in foster care maintenance payment rates or adoption assistance payment rates taking effect during the current fiscal year. Moreover, the amounts are limited to the extent that the reduction can be made by reducing federal matching payments by a uniform percentage across states. The increases in payment rates for these programs are made by the states and localities. Any increases planned by the states for fiscal year 1990 were included in the CBO calculations for sequestration reductions. The estimated outlay savings in 1990 from sequestration are $4 million.

Medicare

The sequestration reductions in the Medicare program are to be achieved by reducing payment amounts for covered services. No changes in coinsurance or deductible amounts are to be made, and covered services are unaffected under a sequestration order. Under such an order, each payment amount for services provided during the fiscal year would be reduced by a maximum of 2 percent relative to whatever level of payment would otherwise be made under Medicare laws and regulations. According to CBO estimates, the outlay savings to be achieved in 1990 by applying this special rule are $1.8 billion.

Veterans Medical Care and Other Health Programs

The Balanced Budget Act limits reductions in budget authority for the nonadministrative expenditures for veterans medical care, community and migrant health centers, and Indian health services and facilities to 2 percent in 1990 and any subsequent year. The estimated outlay savings to be achieved in 1990 by applying this special rule to these programs are $204 million.

Child Support Enforcement Program

In the child support enforcement (CSE) program, the Balanced Budget Act provides that sequestration of entitlement payments to states is to be accomplished by reducing the federal matching rates for state administrative expenses. For 1990, the federal matching rates on most expenditures under CBO estimates would be reduced from 66 percent to 55.7 percent, and the rate for computer-related and laboratory expenditures would be reduced from 90 percent to 76 percent. These reductions in the matching rates are necessary to achieve the same 15.6 percent reduction applied to other nondefense programs.

If states increase their share of CSE spending to maintain total program spending at the expected 1990 level, this reduction in the federal matching rate will lower federal outlays by the same percentage as other nondefense programs. If states do not increase their 1990 budgeted amounts to compensate for lower matching rates, however, the lower federal matching rate would result in a larger percentage reduction in federal spending than the act requires. The estimated outlay savings that are to be achieved in 1990 by applying this special rule are $200 million.

Unemployment Compensation Programs

The Balanced Budget Act provides that the following items are not to be sequestered: regular state unemployment benefits, the state share of extended unemployment benefits, unemployment benefits paid to former federal employees and former members of the armed services, and loans and advances to the state and federal unemployment accounts. The federal share of extended benefits, unemployment insurance for railroad employees, other federally paid benefits, and state and federal administrative expenses are subject to sequestration.

Both the federal and state shares of extended unemployment benefits are paid from the Unemployment Trust Fund--the federal share from a federal account and the state share from each state's account. State law sets the amount of each weekly extended benefit. The Balanced Budget Act permits any state to reduce the weekly extended benefit amount by a percentage equal to the uniform reduction in the federal share. If states do not change their laws to provide for such a reduction, the weekly benefit payments will not be reduced, the state share will increase by the amount of the decrease in the federal share, and total budget outlays that include both federal and state benefits will not be changed by the sequestration. No states are currently paying extended benefits.

Commodity Credit Corporation

Under the Balanced Budget Act, payments and loan eligibility under any contract entered into by the Commodity Credit Corporation (CCC) after a sequestration order has been issued for a fiscal year are subject to a percentage reduction. The act requires that reductions for all farm commodities supported by the CCC be made in a uniform manner, including all noncontract programs, projects, and activities within the CCC's jurisdiction. The act further stipulates that outlay reductions in the post-sequestration year that are the result of contract adjustments in the sequestration year should be credited to the overall outlay reduction required in the sequestration year. The outlay savings to be achieved by applying this special rule are estimated by CBO to be $1.0 billion in 1990, and $1.0 billion in 1991. The actual amount of savings realized in each year will depend upon how the sequestration is carried out for the various CCC programs. In accordance with the act, however, all $2.0 billion of these estimated outlay savings are credited toward the $20.7 billion reduction in nondefense spending required for 1990.

Federal Pay

The Balanced Budget Act provides that rates of pay or any scheduled pay increases may not be reduced following a sequestration order. For members of the armed services, this provision applies to rates of basic pay, basic subsistence allowances, and basic quarter allowances. Budgetary resources available for federal pay, however, will be subject to sequestration as part of the reduction of administrative expenses, which include travel, printing, supplies, and other services. The total amount of government-wide savings to be achieved in 1990 from employee compensation cannot be estimated because program managers are expected to be urged not to resort to personnel furloughs and reductions in force until other administrative expenses are reduced as much as possible.

CONCEPTUAL ISSUES

In preparing its initial sequestration report for 1990, CBO has identified a few areas of ambiguity in the interpretation of the Balanced Budget Act. Some of these uncertainties affect the computation of the baseline deficit, while others involve the determination of whether or not a particular budget account is subject to sequestration.

Baseline Issues

In developing the 1990 baseline estimates for national defense, CBO has taken as its starting point the 1989 budget authority figures shown in the Administration's *Mid-Session Review of the 1990 Budget*. These figures reflect expected transfers of budget authority from one account to another, which the Secretary of Defense can make under existing legislative authority. The OMB estimate of the Balanced Budget Act baseline is predicated on 1989 budget authority figures that do not reflect expected transfers. CBO's assumption adds $0 9 billion to 1990 defense outlays and the deficit because the transfers are, on balance, from slow-spending to fast-spending accounts.

CBO and OMB also make different assumptions about pay absorption--the portion of the January 1989 pay raise that was not reflected in 1989 appropriations and that agencies had to accommodate through reductions in other spending. CBO assumes that the 1989 pay raise for civilian agency employees was fully absorbed, and that the Department of Defense absorbed 42 percent of the pay raise for civilian personnel and 7 percent of the military pay raise. CBO bases its assumption on language in the 13 appropriation bills and the accompanying conference reports for 1989. OMB, however, assumes that there was no pay absorption in fiscal year 1989. CBO's assumption adds $0 2 billion to defense spending and $1.0 billion to nondefense outlays.

Although not affecting the 1990 deficit estimate, several issues involving expiring entitlement programs merit clarification if the Congress considers modifications to the Balanced Budget Act. While entitlements and other mandatory spending are generally projected in accord with current laws, the act provides that agricultural price support programs are to be continued at current rates. The meaning of the term "current rates," however, should be clarified. It has been interpreted both as a constant level of target prices and as a constant rate of decline in target prices. Also, the act does not provide for the continuation of the Food Stamp program (even though it is authorized by the same law that authorizes farm price supports), guaranteed student loans, or trade adjustment assistance. If one of these programs were to expire in the budget year, as Food Stamps will do at the beginning of fiscal year 1991, the baseline estimate would be sharply reduced and sequestration would be unlikely. Such circumstances would limit the realism and usefulness of the baseline.

Sequestration Issues

One problematic area is the treatment of three entitlement programs created by the Family Support Act of 1988. The three new programs are designed to benefit families receiving Aid to Families with Dependent Children (AFDC)--the Job Opportunities and Basic Skills training program (JOBS), child care for families who are in the JOBS program, and extended child care for families who cease to receive AFDC. Pending clarification of their treatment, both CBO and OMB have assumed that the JOBS program is subject to sequestration and that the two child care programs are exempt. The child care funds are authorized under the same part of the Social Security Act (Title IV-A) that authorizes AFDC, which is exempt from sequestration. The JOBS program, however, is distinct from AFDC. Many of its requirements are set out in a different part of the law (Title IV-F), a separate state plan is required, and funding is separate.

CBO and OMB differ with respect to the treatment of the administrative expenses of the vaccine improvement program trust fund. Section 2115(f)(3) of the Public Health Service Act exempts from sequestration any payments of vaccine injury compensation. Because no explicit exemption is provided for administrative expenses, CBO regards them as sequesterable, although OMB treats the entire program as exempt. If such ambiguities are to be avoided, as CBO and OMB have previously noted, exempting programs from sequestration should be accomplished by amending the specifications for the sequestration report contained in the Balanced Budget Act.

CBO and OMB continue to disagree over the treatment of the Treasury's payments to the Farm Credit System Financial Assistance Corporation for interest and the Railroad Retirement Board's supplemental annuity pension fund. In conformance with the opinion of the General Accounting Office, CBO regards these programs as exempt from sequestration.

SEQUESTRATION REDUCTIONS

A summary of CBO's calculations for the sequestration of budgetary resources and the estimated outlay savings for 1990 is provided for national defense programs in Table 7 and for nondefense programs by function in Table 8. The tables show CBO's budget baseline estimates for new budget authority and outlays, reductions in outlays caused by sequestration, and post-sequestration spending levels. In most instances, additional outlay savings would be gained in 1991 and later years as a result of the cancellation of 1990 budget authority. Interest costs would also be permanently lowered as a result of reduced federal borrowing needs. Savings in later years have not been estimated for this report. A detailed list of the sequestration base and reductions by agency and budget account by type of spending authority is provided as Appendix A of this report.

The Balanced Budget Act requires that the revised sequestration reports (but not the initial reports) contain a listing of the sequestration base and reductions for defense programs, projects, and activities. Appendix B provides such a listing for defense budget accounts contained in the energy and water development appropriation. The report does not contain a listing of sequestration reductions by program, project, and activity for other defense accounts, because the defense and military construction appropriation bills for 1990 have not been enacted.

The CBO sequestration calculations and post-sequestration spending levels are advisory only. OMB will determine whether a sequestration is triggered and, if so, the actual sequestration amounts. OMB's final determination will be issued on October 16, 1989.

TABLE 7. DEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1990
(In billions of dollars)

Budget Function 050	October Budget Baseline[a]	CBO Estimated Sequestration[b]	Post-Sequestration
Department of Defense-Military:			
Military personnel			
Budget authority	79 2	8.5	70.7
Outlays	76.3	8.0	68.3
Operation and maintenance			
Budget authority	89.5	9.6	79.9
Outlays	88.3	7.5	80.8
Procurement			
Budget authority	82.7	8.9	73 9
Outlays	80 5	1.7	78.8
Research, development, test, and evaluation			
Budget authority	39.2	4.2	35.0
Outlays	37.3	2.4	34.9
Military construction and other			
Budget authority	9.4	1.1	8.3
Outlays	8.9	0 5	8.5
Subtotal, DoD--military			
Budget authority	299 9	32.2	267.8
Outlays	291.3	20.1	271.3
Atomic Energy Defense Activities			
Budget authority	9.7	1.0	8.6
Outlays	9.0	0.7	8.4
Other Defense-related Activities[c]			
Budget authority	0.5	0.1	0 5
Outlays	0 5	[d]	0 5
Total			
Budget authority	310 2	33 3	276.9
Outlays	300 9	20 8	280.2

a. Does not include an estimated $39.6 billion in unobligated balances subject to sequestration.

b. Does not include $4.2 billion in unobligated balances that would be sequestered.

c. Includes the function 050 portion of Federal Emergency Management Agency budget accounts, which are reduced at the same rate as nondefense programs.

d. $50 million or less.

11

TABLE 8. NONDEFENSE PROGRAM SEQUESTRATIONS FOR FISCAL YEAR 1990 BY FUNCTION (In billions of dollars)

Budget Function		October Budget Baseline	CBO Estimated Sequestration	Post-Sequestration
150	International Affairs			
	Budget authority	19.0	2.9	16.1
	Outlays	17.2	1.6	15.6
250	General Science, Space, and Technology			
	Budget authority	13.5	2.1	11.4
	Outlays	13.7	1.3	12.4
270	Energy			
	Budget authority	5.6	1.2	4.4
	Outlays	4.0	0.7	3.3
300	Natural Resources and Environment			
	Budget authority	17.6	3.2	14.4
	Outlays	18.1	2.0	16.1
350	Agriculture [a]			
	Budget authority	19.5	1.5	18.0
	Outlays	16.2	1.6	14.6
370	Commerce and Housing Credit			
	Budget authority	25.6	0.4	25.2
	Outlays	23.1	0.6	22.4
400	Transportation			
	Budget authority	30.2	4.6	25.5
	Outlays	29.2	1 7	27.6
450	Community and Regional Development			
	Budget authority	8.2	1.0	7.2
	Outlays	7.3	0.3	7.0
500	Education, Training, Employment, and Social Services			
	Budget authority	39.7	4.9	34.8
	Outlays	38.5	1.8	36.7
550	Health			
	Budget authority	57.2	2.7	54.5
	Outlays	55.8	1.1	54.7
570	Medicare			
	Budget authority	123.4	0.0	123.4
	Outlays	99.5	2.1	97.4
600	Income Security			
	Budget authority	184.5	2.4	182.2
	Outlays	145.6	1.3	144.3
650	Social Security			
	Budget authority	313.9	0.0	313.9
	Outlays	249.2	0.3	249.0
700	Veterans Benefits and Services			
	Budget authority	31.5	0.7	30.8
	Outlays	30.7	0.5	30.2
750	Administration of Justice			
	Budget authority	10.3	1.7	8.5
	Outlays	10.1	1.4	8.7
800	General Government			
	Budget authority	10.4	1.6	8.7
	Outlays	10.3	1.5	8.9
900	Net Interest [b]			
	Budget authority	179.8	1·7	178.1
	Outlays	179.8	1 7	178.1
950	Undistributed Offsetting Receipts			
	Budget authority	-36.5	0 0	-36.5
	Outlays	-36.5	0.0	-36.5
	Total			
	Budget authority	1,053.4	32.7	1,020.7
	Outlays	911.8	21.4	890.4

a. Excludes $1.0 billion in estimated 1991 outlay savings for programs of the Commodity Credit Corporation that are credited toward the 1990 sequestration (see discussion of special rule for the CCC).

b. Includes $1.7 billion savings in debt service costs as a result of 1990 outlay reductions through sequestration.

APPENDIX A

SEQUESTRATION REDUCTIONS

BY AGENCY AND BUDGET ACCOUNT

(Fiscal year 1990, in thousands of dollars)

Percentages used:

Defense	10.7 percent
Nondefense	15.6 percent

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-1
Legislative Branch				
Senate				
Salaries, officers and employees				
00 0110 0 1 801	Budget Authority	370,165	57,746	
	Outlays	350,045	54,607	
House of Representatives				
Mileage of Members				
00 0208 0 1 801	Budget Authority	219	34	
	Outlays	110	17	
Salaries and expenses				
00 0400 0 1 801	Budget Authority	541,701	84,505	
	Outlays	510,282	79,604	
Congressional use of foreign currency, House of Representatives				
00 0488 0 1 801	401(C) Authority	3,360	524	
	Outlays	3,360	524	
Joint Items				
Capitol Guide Service				
00 0170 0 1 801	Budget Authority	1,316	205	
	Outlays	1,184	185	
Joint Committee on Printing				
00 0180 0 1 801	Budget Authority	1,233	192	
	Outlays	1,144	178	
Joint Economic Committee				
00 0181 0 1 801	Budget Authority	3,593	561	
	Outlays	3,413	532	
Joint Committee on Inaugural Ceremonies of 1989				
00 0186 0 1 801	Budget Authority	823	128	
	Outlays	823	128	
Office of the Attending Physician				
00 0425 0 1 801	Budget Authority	1,476	230	
	Outlays	592	92	
Joint Committee on Taxation				
00 0460 0 1 801	Budget Authority	4,655	726	
	Outlays	4,422	690	
Salaries, Capitol Police				
00 0474 0 1 801	Budget Authority	56,732	8,850	
	Outlays	54,917	8,567	
General expenses, Capitol police				
00 0476 0 1 801	Budget Authority	1,970	307	
	Outlays	1,673	261	
Statements of appropriations				
00 0499 0 1 801	Budget Authority	21	3	
Official mail costs				
00 0825 0 1 801	Budget Authority	56,299	8,783	
	Outlays	56,299	8,783	
Congressional Budget Office				
Salaries and expenses				
08 0100 0 1 801	Budget Authority	19,643	3,064	
	Outlays	17,679	2,758	
Architect of the Capitol				
Office of the Architect of the Capitol: Salaries				
01 0100 0 1 801	Budget Authority	7,048	1,099	
	Outlays	6,421	1,002	
Contingent expenses				
01 0102 0 1 801	Budget Authority	104	16	
	Outlays	104	16	
Capitol buildings				
01 0105 0 1 801	Budget Authority	16,387	2,556	
	Outlays	13,192	2,058	
Capitol grounds				
01 0108 0 1 801	Budget Authority	4,028	628	
	Outlays	3,351	523	
Senate office buildings				
01 0123 0 1 801	Budget Authority	25,690	4,008	
	Outlays	18,908	2,950	
House office buildings				
01 0127 0 1 801	Budget Authority	30,783	4,802	
	Outlays	21,887	3,414	
Capitol Power Plant				
01 0133 0 1 801	Budget Authority	25,993	4,055	
	401(C) Authority - Off. Coll.	253	39	
	Outlays	22,607	3,526	
Structural and mechanical care, Library buildings and grounds				
01 0155 0 1 801	Budget Authority	7,940	1,239	
	Outlays	6,384	996	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-2
Capitol Preservation Fund				
01 8888 0 7 801	Budget Authority	500	78	
Library of Congress				
Salaries and expenses				
03 0101 0 1 503	Budget Authority	158,161	24,673	
	401(C) Authority - Off. Coll.	5,060	789	
	Outlays	134,752	21,021	
Copyright Office: Salaries and expenses				
03 0102 0 1 376	Budget Authority	12,526	1,954	
	401(C) Authority - Off. Coll.	8,144	1,270	
	Outlays	18,791	2,931	
Congressional Research Service: Salaries and expenses				
03 0127 0 1 801	Budget Authority	47,957	7,481	
	Outlays	43,353	6,763	
Books for the blind and physically handicapped: Salaries and expenses				
03 0141 0 1 503	Budget Authority	38,232	5,964	
	Outlays	19,116	2,982	
National Film Preservation Board,Salaries and expenses				
03 0143 0 1 503	Budget Authority	261	41	
	Outlays	261	41	
Furniture and furnishings				
03 0146 0 1 503	Budget Authority	3,533	551	
	Outlays	2,000	312	
Gift and trust fund accounts				
03 9971 0 7 503	401(C) Other - incl. ob. limit	328	51	
	Outlays	328	51	
Government Printing Office				
Office of Superintendent of Documents: Salaries and expenses				
04 0201 0 1 808	Budget Authority	14,422	2,250	
	Outlays	8,956	1,397	
Congressional printing and binding				
04 0203 0 1 801	Budget Authority	75,168	11,726	
	Outlays	60,134	9,381	
Government Printing Office revolving fund				
04 4505 0 4 808	401(C) Authority - Off. Coll.	38,383	5,988	
	Outlays	38,383	5,988	
General Accounting Office				
Salaries and expenses				
05 0107 0 1 801	Budget Authority	371,184	57,905	
	Outlays	341,489	53,272	
United States Tax Court				
Salaries and expenses				
23 0100 0 1 752	Budget Authority	31,141	4,858	
	Outlays	24,913	3,886	
Tax courts independent counsel, U.S. Tax Court				
23 5023 0 2 752	401(C) Authority	10	2	
	Outlays	10	2	
Legislative Branch Boards and Commissions				
Prescription Drug Payment Review Commission				
03 8880 0 1 570	Budget Authority	264	41	
	Outlays	224	35	
Commission on Security and Cooperation in Europe: Salaries and expenses				
09 0110 0 1 801	Budget Authority	795	124	
	Outlays	715	112	
Botanic Garden: Salaries and expenses				
09 0200 0 1 801	Budget Authority	2,703	422	
	Outlays	2,433	380	
Copyright Royalty Tribunal: Salaries and expenses				
09 0310 0 1 376	Budget Authority	131	20	
	Outlays	118	18	
Biomedical Ethics: Salaries and expenses				
09 0400 0 1 801	Budget Authority	254	40	
	Outlays	183	29	
International conferences and contingencies: House and Senate expenses				
09 0500 0 1 801	401(C) Authority	340	53	
	Outlays	340	53	
National Commission on Children				
09 1050 0 1 801	Budget Authority	842	131	
	Outlays	738	115	
United States Bipartisan Commission on Comprehensive Health Care				
09 1100 0 1 801	Budget Authority	1,105	172	
	Outlays	928	145	
Commission on Railroad Retirement Reform				
48 0850 0 1 801	Budget Authority	1,031	161	
	Outlays	1,031	161	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-3
Office of Technology Assessment				
Salaries and expenses				
09 0700 0 1 801	Budget Authority	19,105	2,980	
	Outlays	14,329	2,235	
John C. Stennis Center for Public Service Training and Development				
Payment to the John C. Stennis Center				
09 1200 0 1 801	Budget Authority	7,830	1,221	
	Outlays	7,830	1,221	
John C. Stennis Center for Public Service Development trust fund				
09 8275 0 7 801	401(C) Authority	564	88	
	Outlays	564	88	
TOTAL FOR Legislative Branch				
	Budget Authority	1,964,964	306,530	
	401(C) Authority	4,274	667	
	401(C) Authority - Off. Coll.	51,840	8,086	
	401(C) Other - incl. ob. limit	328	51	
	Outlays	1,820,716	284,030	
The Judiciary				
Supreme Court of the United States				
Salaries and expenses				
10 0100 0 1 752	Budget Authority	15,875	2,477	
	Outlays	12,700	1,981	
Care of the buildings and grounds				
10 0103 0 1 752	Budget Authority	2,253	351	
	Outlays	1,690	264	
United States Court of Appeals for the Federal Circuit				
Salaries and expenses				
10 0510 0 1 752	Budget Authority	7,533	1,175	
	Outlays	6,780	1,058	
United States Court of International Trade				
Salaries and expenses				
10 0400 0 1 752	Budget Authority	7,568	1,181	
	Outlays	6,811	1,063	
Courts of Appeals, District Courts, and other Judicial Services				
Salaries and expenses				
10 0920 0 1 752	Budget Authority	1,152,811	179,839	
	401(C) Authority - Off. Coll.	3,500	546	
	Outlays	1,064,086	165,997	
Defender services				
10 0923 0 1 752	Budget Authority	115,784	18,062	
	Outlays	57,892	9,031	
Fees of jurors and commissioners				
10 0925 0 1 752	Budget Authority	51,249	7,994	
	Outlays	46,124	7,195	
Court security				
10 0930 0 1 752	Budget Authority	43,266	6,749	
	Outlays	28,123	4,387	
Registry administration				
10 5101 0 2 752	401(C) Authority	21,000	3,276	
	Outlays	21,000	3,276	
Administrative Office of the United States Courts				
Salaries and expenses				
10 0927 0 1 752	Budget Authority	35,913	5,602	
	Outlays	32,322	5,042	
Federal Judicial Center				
Salaries and expenses				
10 0928 0 1 752	Budget Authority	11,861	1,850	
	Outlays	9,489	1,480	
Judiciary Retirement Funds				
Payment to judicial officers' retirement fund				
10 0941 0 1 752	Budget Authority	4,000	624	
Judicial officers' retirement fund				
10 8122 0 7 602	401(C) Other - incl. ob. limit	4,000	624	
	Outlays	4,000	624	
TOTAL FOR The Judiciary				
	Budget Authority	1,448,113	225,904	
	401(C) Authority	21,000	3,276	
	401(C) Authority - Off. Coll.	3,500	546	
	401(C) Other - incl. ob. limit	4,000	624	
	Outlays	1,291,017	201,398	
Executive Office of the President				
The White House Office				
Salaries and expenses				
11 0110 0 1 802	Budget Authority	29,778	4,645	
	Outlays	26,800	4,181	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-4
Executive Residence at the White House				
Operating expenses				
11 0210 0 1 802	Budget Authority	6,093	951	
	401(C) Authority - Off. Coll.	853	133	
	Outlays	6,641	1,036	
Official Residence of the Vice President				
Operating expenses				
11 0211 0 1 802	Budget Authority	270	42	
	Outlays	238	37	
Special Assistance to the President				
Salaries and expenses				
11 1454 0 1 802	Budget Authority	2,335	364	
	Outlays	2,055	321	
Council of Economic Advisers				
Salaries and expenses				
11 1900 0 1 802	Budget Authority	2,979	465	
	Outlays	2,592	404	
Council on Environmental Quality and Office of Environmental Quality				
Council on Environmental Quality and Office of Environmental Quality				
11 1453 0 1 802	Budget Authority	909	142	
	Outlays	864	135	
Office of Policy Development				
Salaries and expenses				
11 2200 0 1 802	Budget Authority	3,203	500	
	Outlays	2,787	435	
National Security Council				
Salaries and expenses				
11 2000 0 1 802	Budget Authority	5,432	847	
	Outlays	4,346	678	
National Critical Materials Council				
Salaries and expenses				
11 0111 0 1 802	Budget Authority	241	38	
	Outlays	220	34	
Office of Administration				
Salaries and expenses				
11 0038 0 1 802	Budget Authority	19,380	3,023	
	Outlays	13,954	2,177	
Office of Management and Budget				
Office of Federal Procurement Policy: Salaries and expenses				
11 0201 0 1 802	Budget Authority	2,518	393	
	Outlays	2,269	354	
Salaries and expenses				
11 0300 0 1 802	Budget Authority	42,313	6,601	
	Outlays	37,616	5,868	
Office of National Drug Control Policy				
Salaries and expenses				
11 1457 0 1 802	Budget Authority	3,672	573	
	Outlays	3,290	513	
Office of Science and Technology Policy				
Salaries and expenses				
11 2600 0 1 802	Budget Authority	1,686	263	
	Outlays	1,012	158	
Office of the United States Trade Representative				
Salaries and expenses				
11 0400 0 1 802	Budget Authority	16,211	2,529	
	Outlays	13,779	2,150	
TOTAL FOR Executive Office of the President				
	Budget Authority	137,020	21,376	
	401(C) Authority - Off. Coll.	853	133	
	Outlays	118,463	18,481	
Funds Appropriated to the President				
Unanticipated Needs				
Unanticipated needs				
11 0037 0 1 802	Budget Authority	855	133	
	Outlays	823	128	
Investment in Management Improvement				
Investment in management improvement (Executive direction and management				
11 0061 0 1 802	Budget Authority	1,044	163	
	Outlays	783	122	
International Security Assistance				
Peacekeeping operations				
11 1032 0 1 152	Budget Authority	33,083	5,161	
	Outlays	25,375	3,959	
Economic support fund				
11 1037 0 1 152	Budget Authority	3,401,874	530,692	
	Outlays	1,901,648	296,657	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-5
Military assistance				
11 1080 0 1 152	Budget Authority	488,303	76,175	
	Outlays	95,707	14,930	
International military education and training				
11 1081 0 1 152	Budget Authority	49,486	7,720	
	Outlays	24,743	3,860	
Foreign military sales financing				
11 1082 0 1 152	Budget Authority	4,460,751	695,877	
	Direct Loan Limitation	428,040	66,774	
	Outlays	1,879,200	293,155	
Multilateral Assistance				
Contribution to the International Development Association				
11 0073 0 1 151	Budget Authority	1,038,780	162,050	
Contribution to the Asian Development Bank				
11 0076 0 1 151	Budget Authority	159,097	24,819	
Contribution to the International Bank for Reconstruction and Developmen				
11 0077 0 1 151	Budget Authority	52,201	8,143	
	Outlays	5,220	814	
Contribution to the International Finance Corporation				
11 0078 0 1 151	Budget Authority	5,107	797	
	Outlays	5,107	797	
Contribution to the African Development Fund				
11 0079 0 1 151	Budget Authority	109,620	17,101	
Contribution to the African Development Bank				
11 0082 0 1 151	Budget Authority	7,668	1,196	
	Outlays	7,668	1,196	
International organizations and programs				
11 1005 0 1 151	Budget Authority	236,064	36,826	
	Outlays	175,091	27,314	
Agency for International Development				
Operating expenses Agency for International Development				
11 1000 0 1 151	Budget Authority	444,530	69,346	
	Outlays	334,461	52,175	
Operating expenses of the Agency for International Development Office of				
11 1007 0 1 151	Budget Authority	30,200	4,711	
	Outlays	22,650	3,533	
American schools and hospitals abroad				
11 1013 0 1 151	Budget Authority	36,540	5,700	
	Outlays	12,168	1,898	
Sub-Saharan Africa, development assistance				
11 1014 0 1 151	Budget Authority	574,200	89,575	
	Outlays	48,807	7,614	
Functional development assistance program				
11 1021 0 1 151	Budget Authority	1,266,249	197,535	
	Outlays	107,631	16,790	
International disaster assistance				
11 1035 0 1 151	Budget Authority	29,232	4,560	
	Outlays	7,250	1,131	
Housing and other credit guaranty programs				
72 4340 0 3 151	401(C) Authority - Off. Coll.	6,895	1,076	
	Guaranteed Loan Limitation	130,500	20,358	
	Outlays	6,736	1,051	
Private sector revolving fund				
72 4341 0 3 151	Budget Authority	8,874	1,384	
	Direct Loan Limitation	12,528	1,954	
	Guaranteed Loan Limitation	52,200	8,143	
	Outlays	920	144	
Trade and Development Program				
Trade and development program				
11 1001 0 1 151	Budget Authority	26,144	4,078	
	Outlays	5,412	844	
Peace Corps				
Peace Corps				
11 0100 0 1 151	Budget Authority	162,802	25,397	
	401(C) Authority - Off. Coll.	440	69	
	Outlays	134,021	20,907	
Overseas Private Investment Corporation				
Overseas Private Investment Corporation				
71 4030 0 3 151	401(C) Authority - Off. Coll.	12,030	1,877	
	Direct Loan Limitation	24,012	3,746	
	Guaranteed Loan Limitation	182,700	28,501	
	Outlays	14,359	2,240	
Inter-American Foundation				
Inter-American Foundation				
11 4031 0 3 151	Budget Authority	17,392	2,713	
	401(C) Authority - Off. Coll.	13,277	2,071	
	Outlays	12,268	1,914	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-6
African Development Foundation				
African Development Foundation				
11 0700 0 1 151	Budget Authority	8,403	1,311	
	Outlays	4,622	721	
Military Sales Programs				
Special defense acquisition fund				
11 4116 0 3 155	Obligation Limitation	247,287	38,577	
	Outlays	2,473	386	
Foreign military sales trust fund				
11 8242 0 7 155	401(C) Authority - Off. Coll.	263,000	41,028	
	Outlays	244,590	38,156	
Special Assistance for Central America				
Central American reconciliation assistance				
11 1038 0 1 152	Budget Authority	54,492	8,501	
	Outlays	33,458	5,219	
TOTAL FOR Funds Appropriated to the President				
	Budget Authority	12,702,991	1,981,664	
	401(C) Authority - Off. Coll.	295,642	46,121	
	Direct Loan Limitation	464,580	72,474	
	Guaranteed Loan Limitation	365,400	57,002	
	Obligation Limitation	247,287	38,577	
	Outlays	5,113,191	797,655	
Department of Agriculture				
Office of the Secretary				
Office of the Secretary				
12 0115 0 1 352	Budget Authority	6,544	1,021	
	Outlays	6,145	958	
Departmental Administration				
Rental payments and building operations				
12 0117 0 1 352	Budget Authority	73,969	11,539	
	Outlays	63,539	9,912	
Advisory committees				
12 0118 0 1 352	Budget Authority	1,577	246	
	Outlays	1,145	179	
Departmental administration				
12 0120 0 1 352	Budget Authority	27,767	4,332	
	Outlays	18,659	2,911	
Hazardous waste management				
12 0500 0 1 304	Budget Authority	5,220	814	
	Outlays	2,610	407	
Working capital fund				
12 4609 0 4 352	Budget Authority	4,965	775	
	Outlays	3,907	609	
Office of Governmental and Public Affairs				
Office of Governmental and Public Affairs				
12 0130 0 1 352	Budget Authority	9,454	1,475	
	Outlays	7,185	1,121	
Office of the Inspector General				
Office of the Inspector General				
12 0900 0 1 352	Budget Authority	53,951	8,416	
	Outlays	48,232	7,524	
Office of the General Counsel				
Office of the General Counsel				
12 2300 0 1 352	Budget Authority	22,332	3,484	
	Outlays	20,166	3,146	
Agricultural Research Service				
Agricultural Research Service				
12 1400 0 1 352	Budget Authority	598,228	93,324	
	401(C) Authority - Off. Coll.	3,200	499	
	Outlays	472,211	73,665	
Buildings and facilities				
12 1401 0 1 352	Budget Authority	16,726	2,609	
	Outlays	2,509	391	
Cooperative State Research Service				
Cooperative State Research Service				
12 1500 0 1 352	Budget Authority	353,165	55,094	
	401(C) Authority	2,850	445	
	Outlays	188,615	29,424	
Extension Service				
Extension Service				
12 0502 0 1 352	Budget Authority	377,580	58,902	
	401(C) Authority - Off. Coll.	380	59	
	Outlays	292,627	45,650	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-7
National Agricultural Library				
National Agricultural Library				
12 0300 0 1 352	Budget Authority	14,061	2,194	
	Outlays	10,616	1,656	
National Agricultural Statistics Service				
Salaries and expenses				
12 1801 0 1 352	Budget Authority	67,571	10,541	
	401(C) Authority - Off. Coll.	1,200	187	
	Outlays	60,054	9,368	
Economic Research Service				
Salaries and expenses				
12 1701 0 1 352	Budget Authority	52,757	8,230	
	Outlays	43,630	6,806	
World Agricultural Outlook Board				
World agricultural outlook board				
12 2100 0 1 352	Budget Authority	1,946	304	
	Outlays	1,514	236	
Foreign Agricultural Service				
Foreign Agricultural Service				
12 2900 0 1 352	Budget Authority	100,758	15,718	
	Outlays	58,540	9,132	
Office of International Cooperation and Development				
Scientific activities overseas (foreign currency program)				
12 1404 0 1 352	Budget Authority	1,044	163	
	Outlays	833	130	
Salaries and expenses				
12 3200 0 1 352	Budget Authority	5,647	881	
	Outlays	5,641	880	
Foreign Assistance Programs				
Expenses, Public Law 480, foreign assistance programs, Agriculture				
12 2274 0 1 151	Budget Authority	996,049	155,384	
	Direct Loan Limitation	825,700	128,809	
	Obligation Limitation	1,547,104	241,348	
	Outlays	1,407,864	219,627	
Agricultural Stabilization and Conservation Service				
Salaries and expenses				
12 3300 0 1 351	Budget Authority	345	54	
	401(C) Authority - Off. Coll.	19,954	3,113	
	Outlays	19,954	3,113	
Dairy indemnity program				
12 3314 0 1 351	Budget Authority	95	15	
	Outlays	95	15	
Agricultural conservation program				
12 3315 0 1 302	Budget Authority	184,720	28,816	
	Outlays	84,971	13,255	
Emergency conservation program				
12 3316 0 1 453	Budget Authority	5,220	814	
	Outlays	2,349	366	
Colorado river basin salinity control program				
12 3318 0 1 304	Budget Authority	5,692	888	
	Outlays	2,846	444	
Conservation reserve program				
12 3319 0 1 302	Budget Authority	1,603,158	250,093	
	Outlays	873,859	136,322	
Water Bank program				
12 3320 0 1 302	Budget Authority	9,396	1,466	
	Outlays	1,400	218	
Forestry incentives program				
12 3336 0 1 302	Budget Authority	12,994	2,027	
	Outlays	5,016	782	
Federal Crop Insurance Corporation				
Administrative and operating expenses				
12 2707 0 1 351	Budget Authority	211,893	33,055	
	Outlays	120,143	18,742	
Commodity Credit Corporation				
Temporary emergency food assistance program				
12 3635 0 1 351	Budget Authority	172,200	26,863	
	Outlays	156,488	24,412	
Commodity Credit Corporation Fund				
12 4336 0 3 351	401(C) Authority	12,812,000	1,998,672	
	Direct Loan Limitation	10,251,000	1,599,156	
	Guaranteed Loan Limitation	5,742,000	895,752	
	Outlays	12,812,000	1,998,672	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-8
Rural Electrification Administration				
Salaries and expenses				
12 3100 0 1 271	Budget Authority	33,311	5,197	
	Outlays	30,047	4,687	
Reimbursement to the Rural electrification and telephone revolving fund				
12 3101 0 1 271	Budget Authority	356,004	55,537	
Purchase of Rural Telephone Bank capital stock				
12 3102 0 1 452	Budget Authority	29,973	4,676	
	Outlays	29,973	4,676	
Rural electrification and telephone revolving fund				
12 4230 0 3 271	Direct Loan Limitation	3,492,796	544,876	
	Direct Loan Floor	1,867,944	291,399	
	Outlays	85,904	13,401	
Rural telephone bank				
12 4231 0 3 452	Direct Loan Limitation	219,804	34,289	
	Direct Loan Floor	184,834	28,834	
	Outlays	8,141	1,270	
Farmers Home Administration				
Salaries and expenses				
12 2001 0 1 452	Budget Authority	443,810	69,234	
	Outlays	394,991	61,619	
Rural housing for domestic farm labor				
12 2004 0 1 604	Budget Authority	9,932	1,549	
	Outlays	397	62	
Mutual and self-help housing				
12 2006 0 1 604	Budget Authority	8,352	1,303	
	Outlays	668	104	
Very low income housing repair grants				
12 2064 0 1 604	Budget Authority	13,050	2,036	
	Outlays	12,398	1,934	
Rural development grant program				
12 2065 0 1 452	Budget Authority	6,786	1,059	
	Outlays	1,697	265	
Rural water and waste disposal grants				
12 2066 0 1 452	Budget Authority	122,038	19,037	
	Outlays	2,441	380	
Rural community fire protection grants				
12 2067 0 1 452	Budget Authority	3,227	503	
	Outlays	1,452	227	
Rural housing preservation grants				
12 2070 0 1 604	Budget Authority	19,982	3,117	
	Outlays	1,199	187	
Compensation for construction defects				
12 2071 0 1 371	Budget Authority	522	81	
	Outlays	522	81	
Agricultural credit insurance fund				
12 4140 0 3 351	401(C) Authority - Off. Coll.	115,000	17,940	
	Direct Loan Limitation	1,637,619	255,469	
	Guaranteed Loan Limitation	3,471,414	541,541	
	Outlays	1,240,084	193,453	
Rural housing insurance fund				
12 4141 0 3 371	401(C) Authority - Off. Coll.	17,000	2,652	
	Direct Loan Limitation	1,926,170	300,483	
	Obligation Limitation	286,600	44,710	
	Outlays	1,240,290	193,485	
Rural development insurance fund				
12 4155 0 3 452	401(C) Authority - Off. Coll.	2,000	312	
	Direct Loan Limitation	447,354	69,787	
	Guaranteed Loan Limitation	308,711	48,159	
	Outlays	24,774	3,865	
Self-help housing land development fund				
12 4222 0 3 371	Direct Loan Limitation	521	81	
	Outlays	340	53	
Rural development loan fund				
12 4233 0 3 452	Direct Loan Limitation	14,616	2,280	
	Outlays	1,359	212	
Soil Conservation Service				
Conservation operations				
12 1000 0 1 302	Budget Authority	498,342	77,741	
	401(C) Authority - Off. Coll.	9,527	1,486	
	Outlays	468,931	73,153	
Resource conservation and development				
12 1010 0 1 302	Budget Authority	26,674	4,161	
	401(C) Authority - Off. Coll.	4,600	718	
	Outlays	20,551	3,206	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-9
Watershed planning				
12 1066 0 1 301	Budget Authority	9,256	1,444	
	401(C) Authority - Off. Coll.	213	33	
	Outlays	8,229	1,283	
River basin surveys & investigations				
12 1069 0 1 301	Budget Authority	12,887	2,010	
	401(C) Authority - Off. Coll.	166	26	
	Outlays	12,228	1,908	
Watershed and flood prevention operations				
12 1072 0 1 301	Budget Authority	181,527	28,318	
	401(C) Authority - Off. Coll.	11,849	1,848	
	Outlays	133,835	20,878	
Great plains conservation program				
12 2268 0 1 302	Budget Authority	21,588	3,368	
	401(C) Authority - Off. Coll.	41	6	
	Outlays	9,820	1,532	
Miscellaneous contributed funds (Water resources)				
12 8210 0 7 301	401(C) Authority	481	75	
	Outlays	481	75	
Miscellaneous contributed funds (Conservation and land management)				
12 8210 0 7 302	401(C) Authority	100	16	
Animal and Plant Health Inspection Service				
Salaries and expenses				
12 1600 0 1 352	Budget Authority	351,584	54,847	
	401(C) Authority - Off. Coll.	17,434	2,720	
	Outlays	310,655	48,462	
Buildings and facilities				
12 1601 0 1 352	Budget Authority	2,658	415	
Federal Grain Inspection Service				
Salaries and expenses				
12 2400 0 1 352	Budget Authority	8,678	1,354	
	Outlays	7,472	1,166	
Inspection and weighing services				
12 4050 0 3 352	401(C) Authority - Off. Coll.	36,856	5,750	
	Outlays	36,856	5,750	
Agricultural Marketing Service				
Marketing services				
12 2500 0 1 352	Budget Authority	35,607	5,555	
	401(C) Authority - Off. Coll.	37,278	5,815	
	Outlays	47,355	7,387	
Payments to States and possessions				
12 2501 0 1 352	Budget Authority	983	153	
	Outlays	153	24	
Perishable Agricultural Commodities Act fund				
12 5070 0 2 352	401(C) Authority	5,500	858	
	Outlays	4,131	644	
Funds for strengthening markets, income, and supply (section 32)				
12 5209 0 2 605	401(C) Authority	522,746	81,548	
	Outlays	191,000	29,796	
Milk market orders assessment fund				
12 8412 0 8 351	401(C) Authority - Off. Coll.	38,709	6,039	
	Outlays	38,709	6,039	
Miscellaneous trust funds				
12 9972 0 7 352	401(C) Authority	85,979	13,413	
	Outlays	55,673	8,685	
Office of Transportation				
Office of Transportation				
12 2800 0 1 352	Budget Authority	2,567	400	
	Outlays	2,115	330	
Food Safety and Inspection Service				
Salaries and expenses				
12 3700 0 1 554	Budget Authority	433,289	67,593	
	401(C) Authority - Off. Coll.	46,384	7,236	
	Outlays	440,677	68,746	
Expenses and refunds, inspection and grading of farm products				
12 8137 0 7 352	401(C) Authority	1,150	179	
	Outlays	986	154	
Food and Nutrition Service				
Cash and commodities for selected groups				
12 3503 0 1 605	Budget Authority	207,909	32,434	
	401(C) Authority	40,000	6,240	
	Outlays	212,564	33,160	
Food stamp program				
12 3505 0 1 605	401(C) Authority	54,089	8,438	
	Outlays	21,636	3,375	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-10
Food program administration				
12 3508 0 1 605	Budget Authority	95,495	14,897	
	Outlays	82,126	12,812	
Supplemental feeding programs				
12 3510 0 1 605	Budget Authority	3,000	468	
	Outlays	3,000	468	
Child nutrition programs				
12 3539 0 1 605	401(C) Authority	6,935	1,082	
	Outlays	6,935	1,082	
Human Nutrition Information Service				
Salaries and expenses				
12 3501 0 1 352	Budget Authority	9,329	1,455	
	Outlays	4,021	627	
Packers and Stockyards Administration				
Packers and Stockyards Administration				
12 2600 0 1 352	Budget Authority	10,232	1,596	
	Outlays	9,373	1,462	
Agricultural Cooperative Service				
Salaries and expenses				
12 3000 0 1 352	Budget Authority	4,968	775	
	Outlays	3,115	486	
Forest Service				
Construction				
12 1103 0 1 302	Budget Authority	238,194	37,158	
	401(C) Authority - Off. Coll.	2,835	442	
	Outlays	141,702	22,105	
Forest research				
12 1104 0 1 302	Budget Authority	147,184	22,961	
	401(C) Authority - Off. Coll.	1,262	197	
	Outlays	112,092	17,486	
State and private forestry				
12 1105 0 1 302	Budget Authority	91,045	14,203	
	401(C) Authority - Off. Coll.	550	86	
	Outlays	67,650	10,554	
National forest system				
12 1106 0 1 302	Budget Authority	1,528,031	238,373	
	Outlays	1,324,802	206,669	
Land acquisition				
12 5004 0 2 303	Budget Authority	67,094	10,467	
	Outlays	26,838	4,187	
Range betterment fund				
12 5207 0 2 302	Budget Authority	4,700	733	
	Outlays	3,760	587	
Acquisition of lands for national forests, special acts				
12 5208 0 2 302	Budget Authority	1,010	158	
	Outlays	851	133	
Acquisition of lands to complete land exchanges				
12 5216 0 2 302	Budget Authority	1,070	167	
	Outlays	949	148	
Operations and maintenance of quarters				
12 5219 0 2 302	401(C) Authority	6,064	946	
	Outlays	4,869	760	
Resource management-timber receipts				
12 5220 0 1 302	Budget Authority	104,062	16,234	
	Outlays	83,250	12,987	
Cooperative work trust fund				
12 8028 0 7 302	401(C) Authority	315,117	49,158	
	Outlays	265,959	41,490	
Highway Construction: Mount St. Helens National Monument				
12 8029 0 7 401	Budget Authority	5,573	869	
	Outlays	1,115	174	
Gifts, donations and bequests for forest and rangeland research				
12 8034 0 7 302	Budget Authority	94	15	
	Outlays	94	15	
Other appropriations				
12 9911 0 1 302	Budget Authority	38,101	5,944	
	Outlays	35,053	5,468	
Forest Service permanent appropriations				
12 9921 0 2 806	401(C) Authority	307,430	47,959	
	Outlays	230,880	36,017	
Forest Service permanent appropriations				
12 9922 0 2 302	Budget Authority	21,129	3,296	
	401(C) Authority	140,747	21,957	
	Outlays	122,939	19,178	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-11
Reforestation trust fund				
20 8046 0 7 302	401(C) Other - incl. ob. limit	30,000	4,680	
	Outlays	30,000	4,680	
TOTAL FOR Department of Agriculture				
	Budget Authority	10,207,871	1,592,428	
	401(C) Authority	14,301,188	2,230,986	
	401(C) Authority - Off. Coll.	366,438	57,164	
	401(C) Other - incl. ob. limit	30,000	4,680	
	Direct Loan Limitation	18,815,580	2,935,230	
	Direct Loan Floor	2,052,778	320,233	
	Guaranteed Loan Limitation	9,522,125	1,485,452	
	Obligation Limitation	1,833,704	286,058	
	Outlays	24,457,470	3,815,362	
Department of Commerce				
General Administration				
Salaries and expenses				
13 0120 0 1 376	Budget Authority	43,027	6,712	
	Outlays	40,876	6,377	
Grants and loans administration				
13 0125 0 1 452	Budget Authority	26,383	4,116	
	Outlays	23,164	3,614	
Economic development assistance programs				
13 2050 0 1 452	Budget Authority	190,037	29,646	
	Guaranteed Loan Limitation	195,750	30,537	
	Outlays	19,004	2,965	
Bureau of the Census				
Salaries and expenses				
13 0401 0 1 376	Budget Authority	102,511	15,992	
	401(C) Authority - Off. Coll.	8,000	1,248	
	Outlays	90,009	14,041	
Periodic censuses and programs				
13 0450 0 1 376	Budget Authority	592,711	92,463	
	Outlays	576,115	89,874	
Economic and Statistical Analysis				
Salaries and expenses				
13 1500 0 1 376	Budget Authority	35,137	5,481	
	401(C) Authority - Off. Coll.	395	62	
	Outlays	32,018	4,995	
International Trade Administration				
Operations and administration				
13 1250 0 1 376	Budget Authority	178,310	27,816	
	401(C) Authority - Off. Coll.	15,960	2,490	
	Outlays	140,777	21,961	
Export Administration				
Operations and administration				
13 0300 0 1 376	Budget Authority	42,581	6,643	
	Outlays	29,807	4,650	
Minority Business Development Agency				
Minority business development				
13 0201 0 1 376	Budget Authority	41,731	6,510	
	Outlays	12,519	1,953	
United States Travel and Tourism Administration				
Salaries and expenses				
13 0700 0 1 376	Budget Authority	14,570	2,273	
	401(C) Authority - Off. Coll.	1,450	226	
	Outlays	12,669	1,976	
National Oceanic and Atmospheric Administration				
Operations, research, and facilities				
13 1450 0 1 306	Budget Authority	1,339,044	208,891	
	401(C) Authority - Off. Coll.	11,434	1,784	
	Outlays	921,402	143,739	
Coastal energy impact fund				
13 4315 0 3 452	401(C) Authority - Off. Coll.	5,200	811	
	Outlays	5,200	811	
Federal ship financing fund, fishing vessels				
13 4417 0 3 376	401(C) Authority - Off. Coll.	7,300	1,139	
	Guaranteed Loan Limitation	480,000	74,880	
	Outlays	7,300	1,139	
Fishermen's contingency fund				
13 5120 0 2 376	Budget Authority	752	117	
	Outlays	714	111	
Foreign fishing observer fund				
13 5122 0 2 376	Budget Authority	2,023	316	
	Outlays	1,942	303	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-12
Fisheries promotional fund				
13 5124 0 2 376	Budget Authority	3,135	489	
	Outlays	1,724	269	
Promote and develop fishery products and research pertaining to American				
13 5139 0 2 376	401(C) Other - incl. ob. limit	4,591	716	
	Outlays	2,468	385	
Aviation weather services program				
13 8105 0 7 306	Budget Authority	29,981	4,677	
	Outlays	29,981	4,677	
Patent and Trademark Office				
Salaries and expenses				
13 1006 0 1 376	Budget Authority	115,102	17,956	
	401(C) Authority - Off. Coll.	180,032	28,085	
	Outlays	162,324	25,323	
Technology Administration				
Information products and services				
13 8546 0 7 376	401(C) Authority	49,429	7,711	
	Outlays	33,760	5,267	
National Institute of Standards and Technology				
Scientific and technical research and services				
13 0500 0 1 376	Budget Authority	167,123	26,071	
	Outlays	129,116	20,142	
Working capital fund				
13 4650 0 4 376	Budget Authority	1,601	250	
	Outlays	801	125	
National Telecommunications and Information Administration				
Salaries and expenses				
13 0550 0 1 376	Budget Authority	14,527	2,266	
	Outlays	11,622	1,813	
Public telecommunications facilities, planning and construction				
13 0551 0 1 503	Budget Authority	20,910	3,262	
	Outlays	2,426	378	
TOTAL FOR Department of Commerce				
	Budget Authority	2,961,196	461,947	
	401(C) Authority	49,429	7,711	
	401(C) Authority - Off. Coll.	229,771	35,845	
	401(C) Other - incl. ob. limit	4,591	716	
	Guaranteed Loan Limitation	675,750	105,417	
	Outlays	2,287,738	356,888	
Department of Defense--Military				
Military Personnel				
Military personnel, Marine Corps				
17 1105 0 1 051	Budget Authority	5,771,660	617,568	
	Outlays	5,483,077	586,689	
Reserve personnel, Marine Corps				
17 1108 0 1 051	Budget Authority	310,379	33,211	
	Outlays	266,926	28,561	
Reserve personnel, Navy				
17 1405 0 1 051	Budget Authority	1,563,538	167,299	
	Outlays	1,407,184	150,569	
Military personnel, Navy				
17 1453 0 1 051	Budget Authority	19,262,472	2,061,085	
	Outlays	18,299,348	1,958,030	
Military personnel, Army				
21 2010 0 1 051	Budget Authority	24,787,845	2,652,299	
	Outlays	23,424,514	2,506,423	
National Guard personnel, Army				
21 2060 0 1 051	Budget Authority	3,238,829	346,555	
	Outlays	2,914,946	311,899	
Reserve personnel, Army				
21 2070 0 1 051	Budget Authority	2,174,299	232,650	
	Outlays	2,022,098	216,364	
Military personnel, Air Force				
57 3500 0 1 051	Budget Authority	20,449,248	2,188,070	
	Outlays	19,426,786	2,078,666	
Reserve personnel, Air Force				
57 3700 0 1 051	Budget Authority	644,829	68,997	
	Outlays	593,243	63,477	
National Guard personnel, Air Force				
57 3850 0 1 051	Budget Authority	1,008,226	107,880	
	Outlays	938,658	100,436	
Operation and Maintenance				
Operation and maintenance, Marine Corps				
17 1106 0 1 051	Budget Authority	1,897,109	202,991	
	Outlays	1,403,861	150,213	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-13
Operation and maintenance, Marine Corps Reserve				
17 1107 0 1 051	Budget Authority	81,056	8,673	
	Outlays	52,119	5,577	
Operation and maintenance, Navy				
17 1804 0 1 051	Budget Authority	26,262,788	2,810,118	
	Outlays	19,697,091	2,107,589	
Operation and maintenance, Navy Reserve				
17 1806 0 1 051	Budget Authority	1,021,346	109,284	
	Outlays	735,369	78,684	
National Board for the Promotion of Rifle Practice, Army				
21 1705 0 1 051	Budget Authority	4,486	480	
	Outlays	4,374	468	
Operation and maintenance, Army				
21 2020 0 1 051	Budget Authority	23,265,084	2,489,364	
	Outlays	18,612,067	1,991,491	
Operation and maintenance, Army National Guard				
21 2065 0 1 051	Budget Authority	1,875,873	200,718	
	Outlays	1,538,216	164,589	
Operation and maintenance, Army Reserve				
21 2080 0 1 051	Budget Authority	828,666	88,667	
	Outlays	730,055	78,116	
Operation and maintenance, Air Force				
57 3400 0 1 051	Budget Authority	22,872,145	2,447,320	
	Outlays	17,840,273	1,908,909	
Operation and maintenance, Air Force Reserve				
57 3740 0 1 051	Budget Authority	1,077,254	115,266	
	Outlays	951,215	101,780	
Operation and maintenance, Air National Guard				
57 3840 0 1 051	Budget Authority	2,053,255	219,698	
	Outlays	1,786,332	191,138	
Operation and maintenance, Defense agencies				
97 0100 0 1 051	Budget Authority	8,014,468	857,548	
	Outlays	6,892,442	737,491	
Court of Military Appeals, Defense				
97 0104 0 1 051	Budget Authority	3,656	391	
	Outlays	3,144	336	
Drug interdiction, Defense				
97 0105 0 1 051	Budget Authority	219,240	23,459	
	Outlays	164,430	17,594	
Goodwill games				
97 0106 0 1 051	Budget Authority	5,220	559	
	Outlays	2,297	246	
Foreign currency fluctuations, Defense				
97 0801 0 1 051	Unobligated Balances - Defense	414,152	44,314	
Humanitarian assistance				
97 0819 0 1 051	Budget Authority	10,440	1,117	
	Outlays	6,139	657	
Procurement				
Procurement, Marine Corps				
17 1109 0 1 051	Budget Authority	1,348,681	144,309	
	Unobligated Balances - Defense	266,802	28,548	
	Outlays	109,853	11,754	
Aircraft procurement, Navy				
17 1506 0 1 051	Budget Authority	9,723,508	1,040,415	
	Unobligated Balances - Defense	1,865,544	199,613	
	Outlays	1,274,796	136,403	
Weapons procurement, Navy				
17 1507 0 1 051	Budget Authority	6,358,973	680,411	
	Unobligated Balances - Defense	2,295,631	245,633	
	Outlays	952,007	101,865	
Shipbuilding and conversion, Navy				
17 1611 0 1 051	Budget Authority	9,951,878	1,064,851	
	Unobligated Balances - Defense	9,802,211	1,048,837	
	Outlays	1,027,212	109,911	
Other procurement, Navy				
17 1810 0 1 051	Budget Authority	4,828,908	516,693	
	Unobligated Balances - Defense	1,804,590	193,091	
	Outlays	669,984	71,688	
Aircraft procurement, Army				
21 2031 0 1 051	Budget Authority	2,998,147	320,802	
	Unobligated Balances - Defense	555,538	59,443	
	Outlays	543,713	58,178	
Missile procurement, Army				
21 2032 0 1 051	Budget Authority	2,706,056	289,548	
	Unobligated Balances - Defense	779,755	83,434	
	Outlays	209,148	22,379	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-14
Procurement of weapons and tracked combat vehicles, Army				
21 2033 0 1 051	Budget Authority	2,944,449	315,056	
	Unobligated Balances - Defense	1,303,644	139,490	
	Outlays	195,413	20,910	
Procurement of ammunition, Army				
21 2034 0 1 051	Budget Authority	2,093,424	223,996	
	Unobligated Balances - Defense	168,801	18,062	
	Outlays	565,556	60,514	
Other procurement, Army				
21 2035 0 1 051	Budget Authority	4,864,989	520,554	
	Unobligated Balances - Defense	1,602,125	171,427	
	Outlays	375,092	40,135	
Aircraft procurement, Air Force				
57 3010 0 1 051	Budget Authority	16,306,743	1,744,822	
	Unobligated Balances - Defense	6,053,661	647,742	
	Outlays	1,475,787	157,909	
Missile procurement, Air Force				
57 3020 0 1 051	Budget Authority	7,433,693	795,405	
	Unobligated Balances - Defense	2,758,717	295,183	
	Outlays	2,537,911	271,557	
Other procurement, Air Force				
57 3080 0 1 051	Budget Authority	8,512,255	910,811	
	Unobligated Balances - Defense	2,139,693	228,947	
	Outlays	5,219,454	558,482	
Procurement, Defense agencies				
97 0300 0 1 051	Budget Authority	1,233,541	131,989	
	Unobligated Balances - Defense	349,815	37,430	
	Outlays	443,339	47,437	
National guard and reserve equipment				
97 0350 0 1 051	Budget Authority	1,188,908	127,213	
	Unobligated Balances - Defense	442,388	47,336	
	Outlays	97,877	10,473	
Defense production act purchases				
97 0360 0 1 051	Budget Authority	34,974	3,742	
	Unobligated Balances - Defense	45,850	4,906	
Chemical agents and munitions destruction, Defense				
97 0390 0 1 051	Budget Authority	187,397	20,051	
	Unobligated Balances - Defense	31,788	3,401	
	Outlays	132,872	14,217	
Research, Development, Test, and Evaluation				
Research, development, test, and evaluation, Navy				
17 1319 0 1 051	Budget Authority	9,730,714	1,041,186	
	Unobligated Balances - Defense	482,879	51,668	
	Outlays	5,413,467	579,241	
Research, development, test, and evaluation, Army				
21 2040 0 1 051	Budget Authority	5,343,007	571,702	
	Unobligated Balances - Defense	395,274	42,294	
	Outlays	3,098,672	331,558	
Research, development, test, and evaluation, Air Force				
57 3600 0 1 051	Budget Authority	15,324,408	1,639,712	
	Unobligated Balances - Defense	1,708,045	182,761	
	Outlays	8,686,551	929,461	
Research, development, test, and evaluation, Defense agencies				
97 0400 0 1 051	Budget Authority	8,540,712	913,856	
	Unobligated Balances - Defense	629,063	67,310	
	Outlays	4,859,980	520,018	
Developmental test and evaluation, Defense				
97 0450 0 1 051	Budget Authority	155,890	16,680	
	Unobligated Balances - Defense	34,398	3,681	
	Outlays	57,086	6,108	
Operational test and evaluation, Defense				
97 0460 0 1 051	Budget Authority	74,080	7,927	
	Unobligated Balances - Defense	20,694	2,214	
	Outlays	41,984	4,492	
Military Construction				
Military construction, Navy				
17 1205 0 1 051	Budget Authority	1,645,993	176,121	
	Unobligated Balances - Defense	374,393	40,060	
	Outlays	585,912	62,692	
Military construction, Naval Reserve				
17 1235 0 1 051	Budget Authority	63,580	6,803	
	Unobligated Balances - Defense	10,927	1,169	
	Outlays	11,176	1,195	
Military construction, Army				
21 2050 0 1 051	Budget Authority	1,194,170	127,776	
	Unobligated Balances - Defense	437,348	46,796	
	Outlays	489,455	52,372	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-15
Military construction, Army National Guard				
21 2085 0 1 051	Budget Authority	239,241	25,599	
	Unobligated Balances - Defense	44,743	4,788	
	Outlays	34,078	3,646	
Military construction, Army Reserve				
21 2086 0 1 051	Budget Authority	89,744	9,603	
	Unobligated Balances - Defense	21,950	2,349	
	Outlays	27,924	2,988	
Military construction, Air Force				
57 3300 0 1 051	Budget Authority	1,279,867	136,946	
	Unobligated Balances - Defense	649,510	69,498	
	Outlays	559,519	59,868	
Military construction, Air Force Reserve				
57 3730 0 1 051	Budget Authority	73,706	7,887	
	Unobligated Balances - Defense	23,702	2,536	
	Outlays	10,909	1,167	
Military construction, Air National Guard				
57 3830 0 1 051	Budget Authority	165,482	17,707	
	Unobligated Balances - Defense	53,309	5,704	
	Outlays	21,879	2,341	
Military construction, Defense agencies				
97 0500 0 1 051	Budget Authority	689,024	73,726	
	Unobligated Balances - Defense	356,803	38,178	
	Outlays	292,832	31,333	
Foreign currency fluctuations, construction				
97 0803 0 1 051	Unobligated Balances - Defense	195,814	20,952	
North Atlantic Treaty Organization infrastructure				
97 0804 0 1 051	Budget Authority	513,648	54,960	
	Unobligated Balances - Defense	133,905	14,328	
	Outlays	51,804	5,543	
Family Housing				
Family housing, Navy and Marine Corps				
17 0703 0 1 051	Budget Authority	834,199	89,259	
	Unobligated Balances - Defense	173,606	18,576	
	Outlays	564,370	60,387	
Family housing, Army				
21 0702 0 1 051	Budget Authority	1,594,168	170,576	
	Unobligated Balances - Defense	120,034	12,844	
	Outlays	959,953	102,715	
Family housing, Air Force				
57 0704 0 1 051	Budget Authority	950,964	101,753	
	Unobligated Balances - Defense	105,938	11,335	
	Outlays	591,865	63,330	
Family housing, Defense agencies				
97 0706 0 1 051	Budget Authority	21,611	2,312	
	Unobligated Balances - Defense	176	19	
	Outlays	12,201	1,306	
Revolving and Management Funds				
Navy stock fund				
17 4911 0 4 051	Budget Authority	192,827	20,632	
	Outlays	19,476	2,084	
Army stock fund				
21 4991 0 4 051	Budget Authority	304,744	32,608	
	Outlays	17,675	1,891	
Air Force stock fund				
57 4921 0 4 051	Budget Authority	195,124	20,878	
	Outlays	19,708	2,109	
National defense stockpile transaction fund				
97 4555 0 3 051	Budget Authority	34,974	3,742	
	Unobligated Balances - Defense	460,973	49,324	
	Outlays	34,974	3,742	
Defense stock fund				
97 4961 0 4 051	Budget Authority	26,100	2,793	
	Outlays	5,716	612	
TOTAL FOR Department of Defense--Military				
	Budget Authority	300,697,912	32,174,679	
	Unobligated Balances - Defense	39,114,189	4,185,221	
	Outlays	187,495,384	20,062,003	
Department of Defense--Civil				
Cemeterial Expenses, Army				
Salaries and expenses				
21 1805 0 1 705	Budget Authority	13,908	2,170	
	Outlays	9,824	1,533	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-16
Corps of Engineers--Civil				
Inland waterways trust fund				
20 8861 0 7 301	Budget Authority	119,000	18,564	
	Outlays	98,770	15,408	
Flood control, Mississippi River and tributaries				
96 3112 0 1 301	Budget Authority	336,000	52,416	
	401(C) Authority - Off. Coll.	195	30	
	Outlays	275,715	43,011	
General investigations				
96 3121 0 1 301	Budget Authority	131,086	20,449	
	Outlays	90,974	14,192	
Construction, general				
96 3122 0 1 301	Budget Authority	1,099,200	171,475	
	401(C) Authority - Off. Coll.	250	39	
	Outlays	382,528	59,674	
Operation and maintenance, general (Water resources)				
96 3123 0 1 301	Budget Authority	1,193,504	186,187	
	401(C) Authority - Off. Coll.	3,500	546	
	Outlays	966,228	150,732	
Operation and maintenance, general (Recreational resources)				
96 3123 0 1 303	Budget Authority	20,000	3,120	
	Outlays	15,600	2,434	
General expenses				
96 3124 0 1 301	Budget Authority	128,800	20,093	
	Outlays	103,040	16,074	
Regulatory program				
96 3126 0 1 301	Budget Authority	69,427	10,831	
	Outlays	65,956	10,289	
Revolving fund				
96 4902 0 4 301	Budget Authority	10,000	1,560	
	Outlays	8,000	1,248	
Rivers and harbors contributed funds				
96 8862 0 7 301	401(C) Authority	169,465	26,437	
	Outlays	105,068	16,391	
Harbor maintenance trust fund				
96 8863 0 7 301	Budget Authority	164,000	25,584	
	Outlays	164,000	25,584	
Permanent appropriations (Water resources)				
96 9921 0 2 301	401(C) Authority	7,000	1,092	
	Outlays	4,508	703	
Permanent appropriations (Other general purpose fiscal assistance)				
96 9921 0 2 806	401(C) Authority	5,000	780	
Soldiers' and Airmen's Home				
Operation and maintenance				
84 8931 0 7 705	Budget Authority	39,819	6,212	
	401(C) Authority - Off. Coll.	144	22	
	Outlays	34,986	5,457	
Capital outlays				
84 8932 0 7 705	Budget Authority	15,472	2,414	
	Outlays	464	72	
Forest and Wildlife Conservation, Military Reservations				
Wildlife conservation				
97 5095 0 2 303	401(C) Authority	2,100	328	
	Outlays	1,260	197	
TOTAL FOR Department of Defense--Civil				
	Budget Authority	3,340,216	521,075	
	401(C) Authority	183,565	28,637	
	401(C) Authority - Off. Coll.	4,089	637	
	Outlays	2,326,921	362,999	
Department of Health and Human Services, except Social Security				
Food and Drug Administration				
Program expenses				
75 0600 0 1 554	Budget Authority	546,275	85,219	
	Outlays	447,945	69,879	
Buildings and facilities				
75 0603 0 1 554	Budget Authority	25,004	3,901	
	Outlays	2,000	312	
Revolving fund for certification and other services				
75 4309 0 3 554	401(C) Authority - Off. Coll.	3,187	497	
	Outlays	3,187	497	
Health Resources and Services Administration				
Vaccine improvement program trust fund				
20 8175 0 7 551	Budget Authority	1,566	244	
	Outlays	783	122	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-17
Health resources and services (Health care services)				
75 0350 0 1 551	Budget Authority	987,543	154,057	
	Budget Authority - Spec. Rules	10,063	10,063	
	401(C) Authority - Off. Coll.	365	57	
	Direct Loan Limitation	522	81	
	Outlays	598,929	98,529	
Health resources and services (Education and training of health care wor				
75 0350 0 1 553	Budget Authority	207,436	32,360	
	Outlays	124,462	19,416	
Indian Health Service				
Tribal health administration				
75 0390 0 1 551	Budget Authority	79,741	12,440	
	Budget Authority - Spec. Rules	19,957	19,957	
	401(C) Authority - Spec. Rules	60	60	
	Outlays	74,810	24,334	
Indian health facilities				
75 0391 0 1 551	Budget Authority - Spec. Rules	1,291	1,291	
	Outlays	258	258	
Centers for Disease Control				
Disease control, research, and training (Health care services)				
75 0943 0 1 551	Budget Authority	903,481	140,943	
	401(C) Authority - Off. Coll.	800	125	
	Outlays	506,749	79,053	
Disease control, research, and training (Health research)				
75 0943 0 1 552	Budget Authority	124,681	19,450	
	Outlays	83,536	13,032	
National Institutes of Health				
National Library of Medicine (Health research)				
75 0807 0 1 552	Budget Authority	26,587	4,148	
	Outlays	16,484	2,572	
National Library of Medicine (Education and training of health care work				
75 0807 0 1 553	Budget Authority	51,063	7,966	
	Outlays	31,659	4,939	
John E. Fogarty International Center				
75 0819 0 1 552	Budget Authority	16,640	2,596	
	Outlays	8,819	1,376	
Buildings and facilities				
75 0838 0 1 552	Budget Authority	40,227	6,275	
	Outlays	20,114	3,138	
National Institute on Aging (Health research)				
75 0843 0 1 552	Budget Authority	224,119	34,963	
	Outlays	69,477	10,838	
National Institute on Aging (Education and training of health care work				
75 0843 0 1 553	Budget Authority	8,890	1,387	
	Outlays	3,645	569	
National Institute of Child Health and Human Development (Health researc				
75 0844 0 1 552	Budget Authority	428,413	66,832	
	Outlays	137,092	21,386	
National Institute of Child Health and Human Development (Education and				
75 0844 0 1 553	Budget Authority	16,562	2,584	
	Outlays	1,656	258	
Office of the Director (Health research)				
75 0846 0 1 552	Budget Authority	68,948	10,756	
	Outlays	42,748	6,669	
Office of the Director (Education and training of health care work force				
75 0846 0 1 553	Budget Authority	7,162	1,117	
	Outlays	4,297	670	
Research resources (Health research)				
75 0848 0 1 552	Budget Authority	371,804	58,001	
	Outlays	185,902	29,001	
Research resources (Education and training of health care work force)				
75 0848 0 1 553	Budget Authority	2,374	370	
	Outlays	119	19	
National Cancer Institute (Health research)				
75 0849 0 1 552	Budget Authority	1,608,958	250,997	
	Outlays	740,121	115,459	
National Cancer Institute (Education and training of health care work fo				
75 0849 0 1 553	Budget Authority	34,759	5,422	
	Outlays	1,043	163	
National Institute of General Medical Sciences (Health research)				
75 0851 0 1 552	Budget Authority	635,173	99,087	
	Outlays	254,069	39,635	
National Institute of General Medical Sciences (Education and training o				
75 0851 0 1 553	Budget Authority	77,331	12,064	
	Outlays	28,612	4,463	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-18
National Institute of Environmental Health Sciences (Health research)				
75 0862 0 1 552	Budget Authority	224,360	35,000	
	Outlays	136,860	21,350	
National Institute of Environmental Health Sciences (Education and train				
75 0862 0 1 553	Budget Authority	9,827	1,533	
	Outlays	4,914	767	
National Heart, Lung and Blood Institute (Health research)				
75 0872 0 1 552	Budget Authority	1,049,299	163,691	
	Outlays	398,734	62,203	
National Heart, Lung and Blood Institute (Education and training of heal				
75 0872 0 1 553	Budget Authority	43,692	6,816	
	Outlays	1,748	273	
National Institute of Dental Research (Health research)				
75 0873 0 1 552	Budget Authority	131,045	20,443	
	Outlays	66,833	10,426	
National Institute of Dental Research (Education and training of health				
75 0873 0 1 553	Budget Authority	5,957	929	
	Outlays	3,276	511	
National Institute of Diabetes and Digestive and Kidney Diseases (Health				
75 0884 0 1 552	Budget Authority	562,181	87,700	
	Outlays	202,385	31,572	
National Institute of Diabetes and Digestive and Kidney Diseases (Educat				
75 0884 0 1 553	Budget Authority	23,017	3,591	
	Outlays	6,215	970	
National Institute of Allergy and Infectious Diseases (Health research)				
75 0885 0 1 552	Budget Authority	760,335	118,612	
	Outlays	220,497	34,398	
National Institute of Allergy and Infectious Diseases (Education and tra				
75 0885 0 1 553	Budget Authority	15,339	2,393	
	Outlays	2,301	359	
National Institute of Neurological Disorders and Stroke (Health research				
75 0886 0 1 552	Budget Authority	489,219	76,318	
	Outlays	181,011	28,238	
National Institute of Neurological Disorcers and Stroke (Education and t				
75 0886 0 1 553	Budget Authority	12,928	2,017	
	Outlays	3,749	585	
National Eye Institute (Health research)				
75 0887 0 1 552	Budget Authority	235,517	36,741	
	Outlays	77,721	12,124	
National Eye Institute (Education and training of health care work force				
75 0887 0 1 553	Budget Authority	6,212	969	
	Outlays	559	87	
National Institute of Arthritis and Musculoskeletal and Skin Diseases (H				
75 0888 0 1 552	Budget Authority	160,839	25,091	
	Outlays	57,902	9,033	
National Institute of Arthritis and Musculoskeletal and Skin Diseases (E				
75 0888 0 1 553	Budget Authority	6,261	977	
	Outlays	1,816	283	
National Center for Nursing Research (Health research)				
75 0889 0 1 552	Budget Authority	26,454	4,127	
	Outlays	7,407	1,155	
National Center for Nursing Research (Education and training of health c				
75 0889 0 1 553	Budget Authority	4,002	624	
	Outlays	1,001	156	
National Institute of Deafness and Other Communication Disorders (Health				
75 0890 0 1 552	Budget Authority	87,871	13,708	
	Outlays	32,512	5,072	
National Institute of Deafness and Other Communication Disorders (Educat				
75 0890 0 1 553	Budget Authority	2,524	394	
	Outlays	732	114	
Alcohol, Drug Abuse, and Mental Health Administration				
Federal subsidy for Saint Elizabeths Hospital				
75 1300 0 1 551	Budget Authority	24,755	3,862	
	Outlays	24,755	3,862	
Alcohol, drug abuse, and mental health (Health care services)				
75 1361 0 1 551	Budget Authority	1,161,371	181,174	
	Outlays	661,981	103,269	
Alcohol, drug abuse, and mental health (Health research)				
75 1361 0 1 552	Budget Authority	719,959	112,314	
	Outlays	597,566	93,220	
Alcohol, drug abuse, and mental health (Education and training of health				
75 1361 0 1 553	Budget Authority	46,896	7,316	
	Outlays	34,703	5,414	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-19
Office of Assistant Secretary for Health				
Public health service management (Health care services)				
75 1101 0 1 551	Budget Authority	46,034	7,181	
	Outlays	26,239	4,093	
Public health service management (Health research)				
75 1101 0 1 552	Budget Authority	27,106	4,229	
	Outlays	18,161	2,833	
Health Care Financing Administration				
Federal supplementary medical insurance trust fund				
20 8004 0 7 571	401(C) Other - incl. ob. limit	57,920	9,036	
	401(C) Authority - Spec. Rules	601,000	601,000	
	Obligation Limitation	1,167,748	182,169	
	Outlays	1,735,705	778,014	
Federal hospital insurance trust fund				
20 8005 0 7 571	401(C) Other - incl. ob. limit	206,142	32,158	
	401(C) Authority - Spec. Rules	1,133,000	1,133,000	
	Obligation Limitation	995,663	155,324	
	Outlays	2,139,041	1,289,943	
Federal catastrophic drug insurance trust fund				
20 8183 0 7 571	401(C) Authority - Spec. Rules	2,000	2,000	
	Outlays	2,000	2,000	
Federal supplementary medical insurance trust fund, catastrophic				
20 8184 0 7 571	401(C) Authority - Spec. Rules	40,000	40,000	
	Obligation Limitation	126,261	19,697	
	Outlays	165,002	59,500	
Program management (Health care services)				
75 0511 0 1 551	Budget Authority	87,363	13,629	
	Outlays	74,259	11,584	
Program management (Health research)				
75 0511 0 1 552	Budget Authority	10,349	1,614	
	Outlays	8,279	1,292	
Social Security Administration				
Supplemental security income program				
75 0406 0 1 609	Budget Authority	845,738	131,935	
	Outlays	845,738	131,935	
Special benefits for disabled coal miners				
75 0409 0 1 601	401(C) Authority	7,000	1,092	
	Outlays	7,000	1,092	
Family Support Administration				
Program administration				
75 1500 0 1 609	Budget Authority	86,562	13,504	
	401(C) Authority - Off. Coll.	450	70	
	Outlays	65,372	10,198	
Family support payments to States				
75 1501 0 1 609	401(C) Authority	1,279,000	199,524	
	Outlays	1,279,000	199,524	
Low income home energy assistance				
75 1502 0 1 609	Budget Authority	1,444,061	225,274	
	Outlays	1,314,096	204,999	
Refugee and entrant assistance				
75 1503 0 1 609	Budget Authority	399,180	62,272	
	Outlays	259,467	40,477	
Community services block grant				
75 1504 0 1 506	Budget Authority	397,344	61,986	
	Outlays	273,373	42,646	
Work incentives				
75 1505 0 1 504	Budget Authority	95,463	14,892	
	Outlays	89,735	13,999	
Interim assistance to States for legalization				
75 1508 0 1 506	401(C) Other - incl. ob. limit	895,000	139,620	
	Outlays	225,000	35,100	
Payments to states for AFDC work programs				
75 1509 0 1 609	401(C) Other - incl. ob. limit	465,000	72,540	
	Outlays	465,000	72,540	
Human Development Services				
Social services block grant				
75 1634 0 1 506	401(C) Authority	2,700,000	421,200	
	Outlays	2,565,000	400,140	
Human development services				
75 1636 0 1 506	Budget Authority	2,688,760	419,447	
	Outlays	1,479,230	230,760	
Payments to States for foster care and adoption assistance				
75 1645 0 1 506	401(C) Authority - Spec. Rules	5,000	5,000	
	Outlays	3,750	3,750	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-20
Departmental Management				
General Departmental management				
75 0120 0 1 609	Budget Authority	71,738	11,191	
	Outlays	50,217	7,834	
Policy research				
75 0122 0 1 609	Budget Authority	8,209	1,281	
	Outlays	3,284	512	
Office of the Inspector General				
75 0128 0 1 609	Budget Authority	48,950	7,636	
	Outlays	36,713	5,727	
Office for Civil Rights				
75 0135 0 1 751	Budget Authority	17,098	2,667	
	Outlays	15,559	2,427	
Office of Consumer Affairs				
75 0137 0 1 506	Budget Authority	1,811	283	
	Outlays	1,449	226	
TOTAL FOR Department of Health and Human Services, except So				
	Budget Authority	18,580,363	2,898,540	
	Budget Authority - Spec. Rules	31,311	31,311	
	401(C) Authority	3,986,000	621,816	
	401(C) Authority - Off. Coll.	4,802	749	
	401(C) Other - incl. ob. limit	1,624,062	253,354	
	401(C) Authority - Spec. Rules	1,781,060	1,781,060	
	Direct Loan Limitation	522	81	
	Obligation Limitation	2,289,672	357,190	
	Outlays	19,263,363	4,525,173	
Department of the Interior				
Department of the Interior				
Oil Spill Emergency Fund				
14 0119 0 1 306	Budget Authority	7,621	1,189	
	Outlays	3,811	595	
Bureau of Land Management				
Management of lands and resources				
14 1109 0 1 302	Budget Authority	527,277	82,256	
	Outlays	460,313	71,809	
Construction and access				
14 1110 0 1 302	Budget Authority	11,738	1,831	
	Outlays	2,935	458	
Payments in lieu of taxes				
14 1114 0 1 806	Budget Authority	109,620	17,101	
	Outlays	109,620	17,101	
Oregon and California grant lands				
14 1116 0 1 302	Budget Authority	63,895	9,968	
	Outlays	47,282	7,376	
Special acquisition of lands and minerals				
14 1117 0 1 302	401(C) Authority	1,300	203	
	Outlays	1,300	203	
Service charges, deposits, and forfeitures				
14 5017 0 2 302	Budget Authority	6,345	990	
	Outlays	4,492	701	
Land acquisition				
14 5033 0 2 302	Budget Authority	14,884	2,322	
	Outlays	7,443	1,161	
Operation and maintenance of quarters				
14 5048 0 2 302	401(C) Authority	261	41	
	Outlays	217	34	
Range improvements				
14 5132 0 2 302	Budget Authority	8,406	1,311	
	Outlays	5,313	829	
Miscellaneous permanent appropriations (Conservation and land management				
14 9921 0 2 302	401(C) Authority	7,308	1,140	
	Outlays	7,045	1,099	
Miscellaneous permanent appropriations (Other general purpose fiscal ass				
14 9921 0 2 806	401(C) Authority	81,291	12,681	
Miscellaneous trust funds				
14 9971 0 7 302	Budget Authority	106	17	
	401(C) Authority	626	98	
	Outlays	372	58	
Minerals Management Service				
Leasing and royalty management				
14 1917 0 1 302	Budget Authority	181,113	28,254	
	Outlays	117,723	18,365	
Payments to States from receipts under Mineral Leasing Act				
14 5003 0 2 806	401(C) Authority	372,996	58,187	
	Outlays	343,156	53,532	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-21
Office of Surface Mining Reclamation and Enforcement				
Regulation and technology				
14 1801 0 1 302	Budget Authority	108,087	16,862	
	Outlays	63,015	9,831	
Abandoned mine reclamation fund				
14 5015 0 2 302	Budget Authority	202,092	31,526	
	Outlays	54,969	8,575	
Bureau of Reclamation				
Loan program				
14 0667 0 1 301	Budget Authority	34,122	5,323	
	Direct Loan Limitation	31,992	4,991	
	Outlays	20,985	3,274	
Construction program				
14 0684 0 1 301	Budget Authority	662,120	103,291	
	401(C) Authority - Off. Coll.	4,000	624	
	Outlays	560,181	87,388	
Lower Colorado River Basin development fund				
14 4079 0 3 301	401(C) Authority - Off. Coll.	95,456	14,891	
	Outlays	95,456	14,891	
Upper Colorado River Basin fund				
14 4081 0 3 301	401(C) Authority - Off. Coll.	32,375	5,051	
	Outlays	32,375	5,051	
Working capital fund				
14 4524 0 4 301	Budget Authority	8,500	1,326	
	Outlays	6,800	1,061	
Emergency fund				
14 5043 0 2 301	Budget Authority	1,000	156	
	Outlays	605	94	
General investigations				
14 5060 0 2 301	Budget Authority	11,530	1,799	
	401(C) Authority - Off. Coll.	75	12	
	Outlays	7,500	1,170	
Operation and maintenance				
14 5064 0 2 301	Budget Authority	212,287	33,117	
	401(C) Authority - Off. Coll.	10,136	1,581	
	Outlays	175,083	27,313	
General administrative expenses				
14 5065 0 2 301	Budget Authority	47,983	7,485	
	Outlays	43,185	6,737	
Colorado River dam fund, Boulder Canyon project				
14 5656 0 2 301	401(C) Authority	45,100	7,036	
	Outlays	25,842	4,031	
Reclamation trust funds				
14 8070 0 7 301	401(C) Authority	52,217	8,146	
	Outlays	49,293	7,690	
Miscellaneous permanent appropriations (Other general purpose fiscal ass				
14 9922 0 2 806	401(C) Authority	282	44	
	Outlays	226	35	
Geological Survey				
Surveys, investigations and research				
14 0804 0 1 306	Budget Authority	480,893	75,019	
	401(C) Authority	250	39	
	401(C) Authority - Off. Coll.	75,405	11,763	
	Outlays	532,491	83,068	
Operation and maintenance of quarters				
14 5055 0 2 306	401(C) Authority	75	12	
	Outlays	40	6	
Bureau of Mines				
Mines and minerals				
14 0959 0 1 306	Budget Authority	168,987	26,362	
	Outlays	114,911	17,926	
Helium fund				
14 4053 0 3 306	401(C) Authority - Off. Coll.	3,453	539	
	Outlays	3,453	539	
United States Fish and Wildlife Service				
Resource management				
14 1611 0 1 303	Budget Authority	383,296	59,794	
	401(C) Authority - Off. Coll.	5,776	901	
	Outlays	312,966	48,822	
Construction				
14 1612 0 1 303	Budget Authority	49,760	7,763	
	Outlays	9,952	1,553	
Land acquisition				
14 5020 0 2 303	Budget Authority	78,209	12,201	
	Outlays	31,284	4,881	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-22
Operation and maintenance of quarters				
14 5050 0 2 303	401(C) Authority	1,736	271	
	Outlays	1,215	190	
National wildlife refuge fund				
14 5091 0 2 806	Budget Authority	6,965	1,087	
	401(C) Other - incl. ob. limit	6,040	942	
	Outlays	9,387	1,465	
Migratory bird conservation account				
14 5137 0 2 303	401(C) Authority	33,340	5,201	
	Outlays	23,338	3,641	
Sport fish restoration				
14 8151 0 7 303	401(C) Authority	162,606	25,367	
	Outlays	56,912	8,878	
Contributed funds				
14 8216 0 7 303	401(C) Authority	4,165	650	
	Outlays	2,916	455	
Miscellaneous permanent appropriations				
14 9923 0 2 303	401(C) Authority	128,200	19,999	
	Outlays	64,100	10,000	
National Park Service				
Operation of the national park system				
14 1036 0 1 303	Budget Authority	793,288	123,753	
	401(C) Authority - Off. Coll.	2,800	437	
	Outlays	600,501	93,679	
John F. Kennedy Center for the Performing Arts				
14 1038 0 1 303	Budget Authority	5,492	857	
	Outlays	3,570	557	
Construction				
14 1039 0 1 303	Budget Authority	206,738	32,251	
	401(C) Authority - Off. Coll.	11,000	1,716	
	Outlays	42,011	6,553	
National recreation and preservation				
14 1042 0 1 303	Budget Authority	15,571	2,429	
	Outlays	12,457	1,943	
Illinois and Michigan canal national heritage-corridor Commission				
14 1043 0 1 303	Budget Authority	263	41	
	Outlays	132	21	
Land acquisition				
14 5035 0 2 303	Budget Authority	65,474	10,214	
	401(C) Authority	30,000	4,680	
	Outlays	33,416	5,213	
Operation and maintenance of quarters				
14 5049 0 2 303	401(C) Authority	8,632	1,347	
	Outlays	6,474	1,010	
Historic preservation fund				
14 5140 0 2 303	Budget Authority	31,842	4,967	
	Outlays	12,737	1,987	
Miscellaneous permanent appropriations				
14 9924 0 2 303	401(C) Authority	953	149	
	Outlays	324	51	
Bureau of Indian Affairs				
Operation of Indian programs (Conservation and land management)				
14 2100 0 1 302	Budget Authority	162,984	25,426	
	Outlays	135,440	21,129	
Operation of Indian programs (Area and regional development)				
14 2100 0 1 452	Budget Authority	608,415	94,913	
	401(C) Authority - Off. Coll.	4,000	624	
	Outlays	498,641	77,788	
Operation of Indian programs (Elementary, secondary, and vocational educ				
14 2100 0 1 501	Budget Authority	283,534	44,231	
	Outlays	241,004	37,597	
Construction				
14 2301 0 1 452	Budget Authority	99,343	15,498	
	Outlays	22,849	3,564	
Revolving fund for loans				
14 4409 0 3 452	Direct Loan Limitation	13,000	2,028	
	Outlays	13,000	2,028	
Indian loan guaranty and insurance fund				
14 4410 0 3 452	Budget Authority	5,259	820	
	Guaranteed Loan Limitation	41,470	6,469	
	Outlays	3,015	470	
Operation and maintenance of quarters				
14 5051 0 2 452	401(C) Authority	7,448	1,162	
	Outlays	5,958	929	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-23
Cooperative fund (papago)				
14 8366 0 7 452	401(C) Authority	1,353	211	
Miscellaneous permanent appropriations (Area and regional development)				
14 9925 0 2 452	401(C) Authority	55,797	8,704	
	Outlays	26,894	4,195	
Miscellaneous permanent appropriations (Other general government)				
14 9925 0 2 808	401(C) Authority	1,000	156	
	Outlays	1,000	156	
Territorial and International Affairs				
Administration of territories				
14 0412 0 1 808	Budget Authority	54,983	8,577	
	Outlays	30,571	4,769	
Trust Territory of the Pacific Islands				
14 0414 0 1 808	Budget Authority	29,685	4,631	
	Outlays	15,733	2,454	
Compact of free association				
14 0415 0 1 808	Budget Authority	13,029	2,033	
	401(C) Authority	13,000	2,028	
	Outlays	26,029	4,061	
Office of the Secretary				
Salaries and expenses				
14 0102 0 1 306	Budget Authority	52,196	8,143	
	Outlays	44,367	6,921	
Construction management				
14 0103 0 1 306	Budget Authority	1,905	297	
	Outlays	1,716	268	
Office of the Solicitor				
Office of the Solicitor				
14 0107 0 1 306	Budget Authority	26,386	4,116	
	Outlays	23,747	3,705	
Office of Inspector General				
Office of Inspector General				
14 0104 0 1 306	Budget Authority	20,034	3,125	
	Outlays	18,031	2,813	
TOTAL FOR Department of the Interior				
	Budget Authority	5,863,257	914,672	
	401(C) Authority	1,009,936	157,552	
	401(C) Authority - Off. Coll.	244,476	38,139	
	401(C) Other - incl. ob. limit	6,040	942	
	Direct Loan Limitation	44,992	7,019	
	Guaranteed Loan Limitation	41,470	6,469	
	Outlays	5,229,119	815,747	
Department of Justice				
Department of Justice				
Emergency Drug Funding				
15 0331 0 1 751	Budget Authority	75,577	11,790	
	Outlays	67,717	10,564	
General Administration				
Salaries and expenses				
15 0129 0 1 751	Budget Authority	91,432	14,263	
	Outlays	81,923	12,780	
Office of the Inspector General				
15 0328 0 1 751	Budget Authority	9,688	1,511	
	Outlays	8,680	1,354	
United States Parole Commission				
Salaries and expenses				
15 1061 0 1 751	Budget Authority	11,597	1,809	
	Outlays	9,973	1,556	
Legal Activities				
Salaries and expenses, Foreign Claims Settlement Commission				
15 0100 0 1 153	Budget Authority	502	78	
	Outlays	364	57	
Salaries and expenses, General Legal Activities				
15 0128 0 1 752	Budget Authority	262,213	40,906	
	Outlays	228,125	35,588	
Fees and expenses of witnesses				
15 0311 0 1 752	Budget Authority	54,500	8,502	
	Outlays	38,150	5,951	
Salaries and expenses, Antitrust Division				
15 0319 0 1 752	Budget Authority	47,834	7,462	
	Outlays	39,224	6,119	
Salaries and expenses, United States Attorneys				
15 0322 0 1 752	Budget Authority	490,819	76,568	
	Outlays	431,921	67,380	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-24
Salaries and expenses, United States Marshals Service				
15 0324 0 1 752	Budget Authority	218,677	34,114	
	401(C) Authority - Off. Coll.	4,108	641	
	Outlays	200,917	31,343	
Independent counsel				
15 0327 0 1 752	401(C) Authority	6,000	936	
	Outlays	6,000	936	
Salaries and expenses, Community Relations Service				
15 0500 0 1 752	Budget Authority	29,264	4,565	
	Outlays	20,485	3,196	
Support of United States prisoners				
15 1020 0 1 752	Budget Authority	114,944	17,931	
	Outlays	63,219	9,862	
Assets forfeiture fund				
15 5042 0 2 752	Budget Authority	338,014	52,731	
	Outlays	135,206	21,093	
United States trustees system fund				
15 5073 0 2 752	Budget Authority	50,438	7,868	
	Outlays	42,872	6,688	
Federal Bureau of Investigation				
Salaries and expenses				
15 0200 0 1 751	Budget Authority	1,534,141	239,326	
	401(C) Authority - Off. Coll.	24,354	3,799	
	Outlays	1,251,667	195,260	
Drug Enforcement Administration				
Salaries and expenses				
15 1100 0 1 751	Budget Authority	567,488	88,528	
	401(C) Authority - Off. Coll.	1,500	234	
	Outlays	427,116	66,630	
Immigration and Naturalization Service				
Salaries and expenses				
15 1217 0 1 751	Budget Authority	875,617	136,596	
	401(C) Authority - Off. Coll.	3,817	595	
	Outlays	704,311	109,872	
Immigration legalization				
15 5086 0 2 751	401(C) Authority	54,792	8,548	
	Outlays	49,313	7,693	
Immigration user fee				
15 5087 0 2 751	401(C) Authority	105,000	16,380	
	Outlays	99,750	15,561	
Immigration examinations fee				
15 5088 0 2 751	401(C) Authority	54,000	8,424	
	Outlays	51,300	8,003	
Federal Prison System				
Buildings and facilities				
15 1003 0 1 753	Budget Authority	312,719	48,784	
	Outlays	31,272	4,878	
National Institute of Corrections				
15 1004 0 1 754	Budget Authority	10,082	1,573	
	Outlays	4,033	629	
Salaries and expenses				
15 1060 0 1 753	Budget Authority	1,011,708	157,826	
	401(C) Authority - Off. Coll.	12,746	1,988	
	Outlays	923,283	144,032	
Federal Prison Industries, Incorporated				
15 4500 0 4 753	Budget Authority	20,880	3,257	
	Obligation Limitation	2,509	391	
	Outlays	2,509	391	
Office of Justice Programs				
Justice assistance				
15 0401 0 1 754	Budget Authority	331,451	51,707	
	Outlays	122,741	19,148	
Crime victims fund				
15 5041 0 2 754	401(C) Authority	125,000	19,500	
	Outlays	62,500	9,750	
TOTAL FOR Department of Justice				
	Budget Authority	6,459,585	1,007,695	
	401(C) Authority	344,792	53,788	
	401(C) Authority - Off. Coll.	46,525	7,257	
	Obligation Limitation	2,509	391	
	Outlays	5,104,571	796,314	
Department of Labor				
Employment and Training Administration				
Program administration				
16 0172 0 1 504	Budget Authority	75,526	11,782	
	Outlays	59,741	9,320	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-25
Training and employment services				
16 0174 0 1 504	Budget Authority	3,903,761	608,987	
	Outlays	148,343	23,142	
Community service employment for older Americans				
16 0175 0 1 504	Budget Authority	358,952	55,997	
	Outlays	65,688	10,247	
State unemployment insurance and employment service operations (Training				
16 0179 0 1 504	Budget Authority	23,552	3,674	
	Outlays	5,912	922	
Federal unemployment benefits and allowances (Training and employment)				
16 0326 0 1 504	Budget Authority	80,000	12,480	
	Outlays	47,854	7,465	
Federal unemployment benefits and allowances (Unemployment compensation)				
16 0326 0 1 603	401(C) Authority	166,000	25,896	
	Outlays	166,000	25,896	
Unemployment trust fund (Training and employment)				
20 8042 0 7 504	Obligation Limitation	1,092,587	170,444	
	Outlays	458,023	71,452	
Unemployment trust fund (Unemployment compensation)				
20 8042 0 7 603	401(C) Other - incl. ob. limit	105,800	16,505	
	Obligation Limitation	1,753,356	273,524	
	Outlays	1,859,156	290,029	
Labor-Management Services				
Salaries and expenses				
16 0104 0 1 505	Budget Authority	76,713	11,967	
	Outlays	65,053	10,148	
Pension Benefit Guaranty Corporation				
Pension Benefit Guaranty Corporation fund				
16 4204 0 3 601	401(C) Other - incl. ob. limit	13,900	2,168	
	Obligation Limitation	57,600	8,986	
	Outlays	71,500	11,154	
Employment Standards Administration				
Salaries and expenses				
16 0105 0 1 505	Budget Authority	225,932	35,245	
	401(C) Authority - Off. Coll.	1,500	234	
	Outlays	195,350	30,475	
Special workers' compensation expenses				
16 9971 0 7 601	Obligation Limitation	543	85	
	Outlays	543	85	
Black lung disability trust fund				
20 8144 0 7 601	Budget Authority	60,003	9,360	
	Outlays	60,003	9,360	
Occupational Safety and Health Administration				
Salaries and expenses				
16 0400 0 1 554	Budget Authority	262,203	40,903	
	Outlays	233,360	36,404	
Mine Safety and Health Administration				
Salaries and expenses				
16 1200 0 1 554	Budget Authority	173,855	27,121	
	Outlays	158,208	24,680	
Bureau of Labor Statistics				
Salaries and expenses				
16 0200 0 1 505	Budget Authority	198,632	30,987	
	401(C) Authority - Off. Coll.	1,100	172	
	Outlays	170,136	26,542	
Departmental Management				
Office of the Inspector General				
16 0106 0 1 505	Budget Authority	42,020	6,555	
	Outlays	36,599	5,709	
Salaries and expenses				
16 0165 0 1 505	Budget Authority	127,782	19,934	
	Outlays	105,817	16,508	
TOTAL FOR Department of Labor				
	Budget Authority	5,608,931	874,992	
	401(C) Authority	166,000	25,896	
	401(C) Authority - Off. Coll.	2,600	406	
	401(C) Other - incl. ob. limit	119,700	18,673	
	Obligation Limitation	2,904,086	453,039	
	Outlays	3,907,286	609,538	
Department of State				
Department of State				
FMS interest buydown				
11 8882 0 1 152	401(C) Authority	270,000	42,120	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-26
Administration of Foreign Affairs				
Salaries and expenses				
19 0113 0 1 153	Budget Authority	1,897,322	295,982	
	Outlays	1,555,804	242,706	
Protection of foreign missions and officials				
19 0520 0 1 153	Budget Authority	9,500	1,482	
	Outlays	2,850	445	
Emergencies in the diplomatic and consular service				
19 0522 0 1 153	Budget Authority	4,698	733	
	Direct Loan Limitation	626	98	
	Outlays	3,223	503	
Payment to the American Institute in Taiwan				
19 0523 0 1 153	Budget Authority	11,369	1,774	
	Outlays	7,390	1,153	
Acquisition and maintenance of buildings abroad				
19 0535 0 1 153	Budget Authority	250,724	39,113	
	401(C) Authority - Off. Coll.	4,900	764	
	Outlays	52,538	8,196	
Representation allowances				
19 0545 0 1 153	Budget Authority	4,792	748	
	Outlays	4,116	642	
International Organizations and Conferences				
Contributions for international peacekeeping activities				
19 1124 0 1 153	Budget Authority	30,276	4,723	
	Outlays	30,276	4,723	
International conferences and contingencies				
19 1125 0 1 153	Budget Authority	6,268	978	
	Outlays	4,262	665	
Contributions to international organizations				
19 1126 0 1 153	Budget Authority	507,321	79,142	
	401(C) Authority - Off. Coll.	40	6	
	Outlays	481,995	75,191	
International Commissions				
Salaries and expenses, IBWC				
19 1069 0 1 301	Budget Authority	10,965	1,711	
	Outlays	9,430	1,471	
Construction, IBWC				
19 1078 0 1 301	Budget Authority	3,313	517	
	Outlays	663	103	
American sections, international commissions				
19 1082 0 1 301	Budget Authority	4,586	715	
	Outlays	3,100	484	
International fisheries commissions				
19 1087 0 1 302	Budget Authority	11,012	1,718	
	Outlays	11,001	1,716	
Other				
United States emergency refugee and migration assistance fund				
11 0040 0 1 151	Budget Authority	52,200	8,143	
International narcotics control				
11 1022 0 1 151	Budget Authority	105,567	16,468	
	Outlays	36,948	5,764	
Anti-terrorism assistance				
19 0114 0 1 152	Budget Authority	10,273	1,603	
	Outlays	6,164	962	
Soviet-East European research and training				
19 0118 0 1 153	Budget Authority	4,802	749	
	Outlays	240	37	
Payment to the Asia Foundation				
19 0525 0 1 154	Budget Authority	14,303	2,231	
	Outlays	12,158	1,897	
Migration and refugee assistance				
19 1143 0 1 151	Budget Authority	482,520	75,273	
	Outlays	330,526	51,562	
U.S. bilateral science and technology agreements				
19 1151 0 1 153	Budget Authority	2,088	326	
	Outlays	2,088	326	
Fishermen's guaranty fund				
19 5121 0 2 376	Budget Authority	1,803	281	
	Outlays	1,803	281	
International Center, Washington, D.C.				
19 5151 0 2 153	401(C) Authority	1,284	200	
	Outlays	1,223	191	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-27
TOTAL FOR Department of State				
	Budget Authority	3,425,702	534,410	
	401(C) Authority	271,284	42,320	
	401(C) Authority - Off. Coll.	4,940	770	
	Direct Loan Limitation	626	98	
	Outlays	2,557,798	399,018	
Department of the Treasury				
Departmental Offices				
Salaries and expenses				
20 0101 0 1 803	Budget Authority	61,839	9,647	
	401(C) Authority - Off. Coll.	5,123	799	
	Outlays	58,614	9,144	
International affairs				
20 0171 0 1 803	Budget Authority	24,662	3,847	
	Outlays	21,333	3,328	
Federal Law Enforcement Training Center				
Salaries and expenses				
20 0104 0 1 751	Budget Authority	36,751	5,733	
	Outlays	33,076	5,160	
Acquisitions, construction, improvements, and related expenses				
20 0105 0 1 751	Budget Authority	20,880	3,257	
	Outlays	8,770	1,368	
Financial Management Service				
Salaries and expenses				
20 1801 0 1 803	Budget Authority	291,917	45,539	
	Outlays	253,968	39,619	
St Lawrence Seaway toll rebate program				
20 8865 0 7 808	Budget Authority	11,176	1,743	
	Outlays	11,176	1,743	
Federal Financing Bank				
Federal Financing Bank				
20 4521 0 4 803	401(C) Authority - Off. Coll.	2,000	312	
	Outlays	2,000	312	
Bureau of Alcohol, Tobacco and Firearms				
Salaries and expenses				
20 1000 0 1 751	Budget Authority	257,086	40,105	
	Outlays	223,665	34,892	
United States Customs Service				
Salaries and expenses				
20 0602 0 1 751	Budget Authority	1,103,055	172,077	
	401(C) Authority	116,584	18,187	
	Outlays	1,036,693	161,724	
Operation and maintenance, air interdiction program				
20 0604 0 1 751	Budget Authority	155,830	24,309	
	Outlays	85,707	13,370	
Customs forfeiture fund				
20 5693 0 2 803	Budget Authority	10,440	1,629	
	401(C) Authority	20,000	3,120	
	Outlays	30,440	4,749	
Customs services at small airports				
20 5694 0 2 808	Budget Authority	1,705	266	
	Outlays	1,705	266	
Refunds, transfers and expenses, unclaimed, abandoned and seized goods				
20 8789 0 7 803	401(C) Authority	18,560	2,895	
	Outlays	18,560	2,895	
Bureau of Engraving and Printing				
Bureau of Engraving and Printing fund				
20 4502 0 4 803	401(C) Authority - Off. Coll.	333,809	52,074	
	Outlays	333,809	52,074	
United States Mint				
Salaries and expenses				
20 1616 0 1 803	Budget Authority	50,169	7,826	
	401(C) Authority - Off. Coll.	112,170	17,499	
	Outlays	154,814	24,151	
Bureau of the Public Debt				
Administering the public debt				
20 0560 0 1 803	Budget Authority	230,592	35,972	
	Outlays	184,474	28,778	
Internal Revenue Service				
Salaries and expenses				
20 0911 0 1 803	Budget Authority	93,211	14,541	
	Outlays	72,705	11,342	
Processing tax returns				
20 0912 0 1 803	Budget Authority	1,837,199	286,603	
	Outlays	1,469,759	229,282	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-28
Examinations and appeals				
20 0913 0 1 803	Budget Authority	2,079,620	324,421	
	Outlays	1,913,250	298,467	
Investigation, collection and taxpayer service				
20 0914 0 1 803	Budget Authority	1,530,298	238,726	
	Outlays	1,377,268	214,854	
Federal tax lien revolving fund				
20 4413 0 3 803	401(C) Authority - Off. Coll.	8,451	1,318	
	Outlays	8,451	1,318	
United States Secret Service				
Contribution for annuity benefits				
20 1407 0 1 751	401(C) Authority	18,792	2,932	
	Outlays	18,792	2,932	
Salaries and expenses				
20 1408 0 1 751	Budget Authority	380,390	59,341	
	Outlays	323,332	50,440	
TOTAL FOR Department of the Treasury				
	Budget Authority	8,176,820	1,275,582	
	401(C) Authority	173,936	27,134	
	401(C) Authority - Off. Coll.	461,553	72,002	
	Outlays	7,642,361	1,192,208	
Department of Health and Human Services, Social Security				
Social Security				
Federal old-age and survivors insurance trust fund				
20 8006 0 7 651	Obligation Limitation	1,638,298	255,574	
	Outlays	1,209,040	188,610	
Federal disability insurance trust fund				
20 8007 0 7 651	Obligation Limitation	546,163	85,202	
	Outlays	431,425	67,302	
TOTAL FOR Department of Health and Human Services, Social Se				
	Obligation Limitation	2,184,461	340,776	
	Outlays	1,640,465	255,912	
Department of Education				
Office of Elementary and Secondary Education				
Indian education				
91 0101 0 1 501	Budget Authority	74,767	11,664	
	Outlays	10,841	1,691	
Impact aid				
91 0102 0 1 501	Budget Authority	765,352	119,395	
	Outlays	609,220	95,038	
Compensatory education for the disadvantaged				
91 0900 0 1 501	Budget Authority	4,780,620	745,777	
	Outlays	573,674	89,493	
School improvement programs				
91 1000 0 1 501	Budget Authority	1,270,651	198,222	
	Outlays	152,478	23,787	
Office of Bilingual Education and Minority Languages Affairs				
Bilingual, immigrant, and refugee education				
91 1300 0 1 501	Budget Authority	206,079	32,148	
	Outlays	24,729	3,858	
Office of Special Education and Rehabilitative Services				
Education for the handicapped				
91 0300 0 1 501	Budget Authority	2,052,961	320,262	
	Outlays	252,514	39,392	
Rehabilitation services and handicapped research				
91 0301 0 1 506	Budget Authority	224,420	35,010	
	401(C) Authority - Spec. Rules	60,921	60,921	
	Outlays	219,713	73,866	
Payments to institutions for the handicapped (Elementary, secondary, and				
91 0600 0 1 501	Budget Authority	5,570	869	
	Outlays	5,570	869	
Payments to institutions for the handicapped (Higher education)				
91 0601 0 1 502	Budget Authority	34,792	5,428	
	Outlays	34,792	5,428	
Payments to institutions for the handicapped (Higher education)				
91 0602 0 1 502	Budget Authority	68,902	10,749	
	Outlays	64,768	10,104	
Promotion of education for the blind				
91 8893 0 7 501	401(C) Authority	10	2	
	Outlays	5	1	
Office of Vocational and Adult Education				
Vocational and adult education				
91 0400 0 1 501	Budget Authority	1,120,699	174,829	
	401(C) Authority	7,148	1,115	
	Outlays	135,342	21,114	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-29
Office of Postsecondary Education				
Student financial assistance				
91 0200 0 1 502	Budget Authority	6,070,150	946,943	
	Outlays	1,125,827	175,629	
Higher education				
91 0201 0 1 502	Budget Authority	590,621	92,137	
	Outlays	88,890	13,867	
Guaranteed student loans				
91 0230 0 1 502	401(C) Authority - Spec. Rules	41,120	41,120	
	Outlays	26,130	26,130	
College housing and academic facilities loans				
91 0242 0 1 502	Budget Authority	37,148	5,795	
	Direct Loan Limitation	30,944	4,827	
	Outlays	6,204	968	
Howard University				
91 0603 0 1 502	Budget Authority	186,848	29,148	
	Outlays	178,066	27,778	
College housing loans				
91 4250 0 3 502	401(C) Authority - Off. Coll.	650	101	
	Outlays	650	101	
Office of Educational Research and Improvement				
Libraries				
91 0104 0 1 503	Budget Authority	143,237	22,345	
	Outlays	50,563	7,888	
Education research and statistics				
91 1100 0 1 503	Budget Authority	81,642	12,736	
	Outlays	35,106	5,477	
Departmental Management				
Office for civil rights				
91 0700 0 1 751	Budget Authority	44,575	6,954	
	Outlays	36,997	5,772	
Program administration (Research and general education aids)				
91 0800 0 1 503	Budget Authority	266,427	41,563	
	Outlays	221,134	34,497	
Office of the Inspector General				
91 1400 0 1 751	Budget Authority	19,901	3,104	
	Outlays	16,518	2,577	
TOTAL FOR Department of Education				
	Budget Authority	18,045,362	2,815,078	
	401(C) Authority	7,158	1,117	
	401(C) Authority - Off. Coll.	650	101	
	401(C) Authority - Spec. Rules	102,041	102,041	
	Direct Loan Limitation	30,944	4,827	
	Outlays	3,869,731	665,325	
Department of Energy				
Atomic Energy Defense Activities				
Atomic energy defense activities				
89 0220 0 1 053	Budget Authority	7,920,026	847,443	
	Unobligated Balances - Defense	471,675	50,469	
	Outlays	5,202,855	556,706	
Atomic energy defense activities				
89 0221 0 1 053	Budget Authority	1,736,008	185,753	
	Outlays	1,076,324	115,167	
Energy Programs				
Geothermal resources development fund				
89 0206 0 1 271	Budget Authority	75	12	
	Outlays	75	12	
Federal Energy Regulatory Commission				
89 0212 0 1 276	Budget Authority	116,550	18,182	
	Outlays	99,068	15,455	
Fossil energy research and development				
89 0213 0 1 271	Budget Authority	398,459	62,160	
	Outlays	159,384	24,864	
Energy conservation				
89 0215 0 1 272	Budget Authority	389,433	60,752	
	Outlays	97,358	15,188	
Energy information administration				
89 0216 0 1 276	Budget Authority	66,360	10,352	
	Outlays	43,134	6,729	
Economic regulation				
89 0217 0 1 276	Budget Authority	22,752	3,549	
	Outlays	14,334	2,236	
Strategic petroleum reserve				
89 0218 0 1 274	Budget Authority	181,252	28,275	
	Outlays	99,689	15,551	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-30
Naval petroleum and oil shale reserves				
89 0219 0 1 271	Budget Authority	193,373	30,166	
	Outlays	116,024	18,100	
General science and research activities				
89 0222 0 1 251	Budget Authority	1,114,431	173,851	
	Outlays	789,017	123,087	
Energy supply, R&D activities				
89 0224 0 1 271	Budget Authority	1,941,672	302,901	
	Outlays	970,836	151,450	
Energy supply, R&D activities				
89 0225 0 1 271	Budget Authority	273,794	42,712	
	Outlays	136,897	21,356	
Uranium supply and enrichment activities				
89 0226 0 1 271	Budget Authority	1,364,800	212,909	
	Outlays	1,187,376	185,231	
Plant and capital equipment				
89 0227 0 1 271	Budget Authority	66,200	10,327	
	Outlays	57,594	8,985	
SPR petroleum				
89 0233 0 1 274	Budget Authority	161,093	25,131	
	401(C) Authority	91,555	14,283	
	Outlays	189,486	29,560	
Emergency preparedness				
89 0234 0 1 274	Budget Authority	6,559	1,023	
	Outlays	5,247	819	
Clean coal technology				
89 0235 0 1 271	401(C) Authority	710,000	110,760	
	Outlays	8,450	1,318	
Isotope production and distribution fund				
89 4180 0 3 271	Budget Authority	16,243	2,534	
Payments to states under Federal Power Act				
89 5105 0 2 806	401(C) Authority	2,446	382	
	Outlays	2,446	382	
Nuclear waste disposal fund				
89 5227 0 2 271	Budget Authority	346,000	53,976	
	Outlays	173,000	26,988	
Power Marketing Administration				
Operation and maintenance, Southeastern Power Administration				
89 0302 0 1 271	Budget Authority	932	145	
	Outlays	848	132	
Operation and maintenance, Southwestern Power Administration				
89 0303 0 1 271	Budget Authority	8,196	1,279	
	Outlays	4,713	735	
Operation and maintenance, Alaska Power Administration				
89 0304 0 1 271	Budget Authority	763	119	
	Outlays	366	57	
Bonneville Power Administration fund				
89 4045 0 3 271	401(C) Authority - Off. Coll.	45,800	7,145	
	Outlays	45,800	7,145	
Colorado river basins power marketing fund, Western Area Power Administr				
89 4452 0 3 271	401(C) Authority - Off. Coll.	7,668	1,196	
	Outlays	7,668	1,196	
Construction, rehabilitation, operation and maintenance, Western Area Po				
89 5068 0 2 271	Budget Authority	41,376	6,455	
	Outlays	14,234	2,221	
Departmental Administration				
Departmental administration				
89 0228 0 1 276	Budget Authority	351,783	54,878	
	Outlays	211,070	32,927	
Departmental administration				
89 0229 0 1 276	Budget Authority	3,273	511	
	Outlays	1,963	306	
Office of the Inspector General				
89 0236 0 1 276	Budget Authority	22,959	3,582	
	Outlays	19,515	3,044	
TOTAL FOR Department of Energy				
	Budget Authority	16,744,362	2,138,977	
	401(C) Authority	804,001	125,425	
	401(C) Authority - Off. Coll.	53,468	8,341	
	Unobligated Balances - Defense	471,675	50,469	
	Outlays	10,734,771	1,366,947	
Environmental Protection Agency				
Environmental Protection Agency				
Hazardous substance superfund				
20 8145 0 7 304	Budget Authority	1,475,762	230,219	
	401(C) Authority - Off. Coll.	13,200	2,059	
	Obligation Limitation	198,930	31,033	
	Outlays	426,413	66,520	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-31
Leaking underground storage tank trust fund				
20 8153 0 7 304	Budget Authority	52,324	8,163	
	Obligation Limitation	5,235	817	
	Outlays	10,465	1,633	
Construction grants				
68 0103 0 1 304	Budget Authority	2,035,800	317,585	
	Outlays	71,253	11,115	
Research and development (Energy supply)				
68 0107 0 1 271	Budget Authority	52,463	8,184	
	Outlays	15,214	2,373	
Research and development (Pollution control and abatement)				
68 0107 0 1 304	Budget Authority	158,947	24,796	
	Outlays	55,631	8,678	
Abatement, control, and compliance				
68 0108 0 1 304	Budget Authority	751,289	117,201	
	Outlays	334,754	52,222	
Buildings and facilities				
68 0110 0 1 304	Budget Authority	8,352	1,303	
	Outlays	1,420	222	
Salaries and expenses				
68 0200 0 1 304	Budget Authority	868,342	135,461	
	401(C) Authority - Off. Coll.	3,808	594	
	Outlays	741,325	115,647	
Payment to the hazardous substance superfund				
68 0250 0 1 304	Budget Authority	157,104	24,508	
Reregistration and expedited processing revolving fund				
68 4310 0 3 304	401(C) Authority - Off. Coll.	14,500	2,262	
	Outlays	14,500	2,262	
Revolving fund for certification and other services				
68 4311 0 3 304	401(C) Authority - Off. Coll.	1,200	187	
	Outlays	1,200	187	
TOTAL FOR Environmental Protection Agency				
	Budget Authority	5,560,383	867,420	
	401(C) Authority - Off. Coll.	32,708	5,102	
	Obligation Limitation	204,165	31,850	
	Outlays	1,672,175	260,859	
Department of Transportation				
Federal Highway Administration				
Access highways to public recreation areas on certain lakes				
69 0503 0 1 401	Budget Authority	1,348	210	
	Outlays	270	42	
Motor carrier safety				
69 0552 0 1 401	Budget Authority	28,712	4,479	
	Outlays	22,970	3,583	
Railroad-highway crossings demonstration projects				
69 0557 0 1 401	Budget Authority	2,631	410	
	Outlays	526	82	
Trust fund share of other highway programs				
69 8009 0 7 401	Budget Authority	5,262	821	
	Outlays	1,052	164	
Baltimore-Washington Parkway				
69 8014 0 7 401	Budget Authority	13,389	2,089	
	Outlays	2,678	418	
Highway safety research and development				
69 8017 0 7 401	Budget Authority	6,348	990	
	Outlays	1,270	198	
Highway-related safety grants				
69 8019 0 7 401	401(C) Authority	10,000	1,560	
	Obligation Limitation	9,819	1,532	
	Outlays	1,963	306	
Motor carrier safety grants				
69 8048 0 7 401	401(C) Authority	60,000	9,360	
	Obligation Limitation	62,640	9,772	
	Outlays	21,924	3,420	
Federal-aid highways				
69 8083 0 7 401	401(C) Authority	14,103,000	2,200,068	
	401(C) Authority - Off. Coll.	1,500	234	
	Obligation Limitation	12,535,000	1,955,460	
	Outlays	2,531,500	394,914	
Right-of-way revolving fund (trust revolving fund)				
69 8402 0 8 401	Direct Loan Limitation	48,024	7,492	
	Outlays	48,024	7,492	
Miscellaneous appropriations				
69 9911 0 1 401	Budget Authority	57,029	8,897	
	Outlays	11,406	1,779	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-32
Miscellaneous highway trust funds				
69 9972 0 7 401	Budget Authority	65,900	10,280	
	Outlays	13,180	2,056	
National Highway Traffic Safety Administration				
Operations and research				
69 0650 0 1 401	Budget Authority	71,570	11,165	
	Outlays	46,521	7,257	
Operations and research (trust fund share)				
69 8016 0 7 401	Budget Authority	32,405	5,055	
	Outlays	21,063	3,286	
Highway traffic safety grants				
69 8020 0 7 401	401(C) Authority	126,000	19,656	
	Obligation Limitation	131,544	20,521	
	Outlays	52,618	8,209	
Federal Railroad Administration				
Northeast corridor improvement program				
69 0123 0 1 401	Budget Authority	20,462	3,192	
	Outlays	2,046	319	
Office of the Administrator				
69 0700 0 1 401	Budget Authority	22,030	3,437	
	Outlays	20,929	3,265	
Railroad safety				
69 0702 0 1 401	Budget Authority	29,679	4,630	
	Outlays	23,743	3,704	
Grants to National Railroad Passenger Corporation				
69 0704 0 1 401	Budget Authority	609,696	95,113	
	Outlays	548,726	85,601	
Freightline rehabilitation				
69 0713 0 1 401	Budget Authority	6,264	977	
	Outlays	3,758	586	
Railroad research and development				
69 0745 0 1 401	Budget Authority	9,718	1,516	
	Outlays	5,831	910	
Conrail commuter transition assistance				
69 0747 0 1 401	Budget Authority	4,698	733	
	Outlays	517	81	
Urban Mass Transportation Administration				
Administrative expenses				
69 1120 0 1 401	Budget Authority	34,029	5,309	
	Outlays	30,626	4,778	
Research, training, and human resources				
69 1121 0 1 401	Budget Authority	10,440	1,629	
	Outlays	2,088	326	
Interstate transfer grants-transit				
69 1127 0 1 401	Budget Authority	208,800	32,573	
	Outlays	4,176	651	
Washington metro				
69 1128 0 1 401	Budget Authority	175,392	27,361	
	Outlays	3,508	547	
Formula grants				
69 1129 0 1 401	Budget Authority	1,675,620	261,397	
	Outlays	632,716	98,704	
Discretionary grants				
69 8191 0 7 401	401(C) Authority	1,300,000	202,800	
	Obligation Limitation	1,190,160	185,665	
	Outlays	28,658	4,471	
Federal Aviation Administration				
Operations				
69 1301 0 1 402	Budget Authority	3,137,836	489,502	
	401(C) Authority Off. Coll	14,650	2,285	
	Outlays	2,715,524	423,621	
Headquarters administration				
69 1302 0 1 402	Budget Authority	39,008	6,085	
	Outlays	34,327	5,355	
Aircraft purchase loan guarantee program				
69 1399 0 1 402	Budget Authority	150	23	
	Outlays	150	23	
Trust fund share of FAA operations				
69 8104 0 7 402	Budget Authority	503,509	78,547	
	Outlays	503,509	78,547	
Grants-in-aid for airports (Airport and airway trust fund)				
69 8106 0 7 402	Budget Authority	104	16	
	401(C) Authority	1,700,000	265,200	
	Obligation Limitation	1,461,600	228,010	
	Outlays	233,960	36,498	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-33
Facilities and equipment (Airport and airway trust fund)				
69 8107 0 7 402	Budget Authority	1,446,550	225,662	
	401(C) Authority - Off. Coll.	45,327	7,071	
	Outlays	218,913	34,150	
Research, engineering and development (Airport and airway trust fund)				
69 8108 0 7 402	Budget Authority	168,096	26,223	
	401(C) Authority - Off. Coll.	500	78	
	Outlays	101,358	15,812	
Coast Guard				
Operating expenses				
69 0201 0 1 403	Budget Authority	2,067,030	322,457	
	401(C) Authority - Off. Coll.	5,181	808	
	Outlays	1,700,146	265,223	
Acquisition, construction, and improvements				
69 0240 0 1 403	Budget Authority	402,985	62,866	
	Outlays	44,329	6,915	
Retired pay				
69 0241 0 1 403	401(C) Authority	37,463	5,844	
	Outlays	37,463	5,844	
Reserve training				
69 0242 0 1 403	Budget Authority	71,391	11,137	
	Outlays	62,110	9,689	
Research, development, test, and evaluation				
69 0243 0 1 403	Budget Authority	19,765	3,083	
	Outlays	6,720	1,048	
Alteration of bridges				
69 0244 0 1 403	Budget Authority	14,094	2,198	
	Outlays	3,242	505	
Coast Guard shore facilities				
69 0246 0 1 403	Budget Authority	52,581	8,203	
	Outlays	5,784	902	
Offshore oil pollution compensation fund				
69 5167 0 2 304	Obligation Limitation	62,640	9,772	
Pollution fund				
69 5168 0 2 304	401(C) Authority	5,700	889	
	Outlays	1,710	267	
Deepwater port liability fund				
69 5170 0 2 304	Obligation Limitation	52,200	8,143	
Boat safety				
69 8149 0 7 403	Budget Authority	63,102	9,844	
	Obligation Limitation	31,350	4,891	
	Outlays	36,387	5,676	
Maritime Administration				
Ready reserve force				
69 1710 0 1 403	Budget Authority	115,624	18,037	
	Outlays	70,562	11,008	
Operations and training				
69 1750 0 1 403	Budget Authority	70,005	10,921	
	Outlays	59,504	9,283	
Federal ship financing fund				
69 4301 0 3 403	401(C) Other - incl. ob. limit	3,820	596	
	Outlays	3,438	536	
Saint Lawrence Seaway Development Corporation				
Saint Lawrence Seaway Development Corporation				
69 4089 0 3 403	401(C) Authority - Off. Coll.	1,000	156	
	Outlays	1,000	156	
Operations and maintenance				
69 8003 0 7 403	Budget Authority	11,807	1,842	
	Outlays	11,807	1,842	
Office of the Inspector General				
Salaries and expenses				
69 0130 0 1 407	Budget Authority	31,005	4,837	
	Outlays	26,974	4,208	
Research and Special Programs Administration				
Research and special programs				
69 0104 0 1 407	Budget Authority	15,706	2,450	
	Outlays	10,366	1,617	
Pipeline safety				
69 5172 0 2 407	Budget Authority	9,783	1,526	
	Outlays	9,294	1,450	
Office of the Secretary				
Salaries and expenses				
69 0102 0 1 407	Budget Authority	58,124	9,067	
	Outlays	52,312	8,161	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-34
Transportation, planning, research and development				
69 0142 0 1 407	Budget Authority	5,920	924	
	Outlays	2,368	369	
Payments to air carriers, DOT				
69 0150 0 1 402	Budget Authority	32,990	5,147	
	Outlays	30,351	4,735	
Working capital fund				
69 4520 0 4 407	Budget Authority	3,351	523	
	Outlays	3,351	523	
TOTAL FOR Department of Transportation				
	Budget Authority	11,431,938	1,783,383	
	401(C) Authority	17,342,163	2,705,377	
	401(C) Authority - Off. Coll.	68,158	10,632	
	401(C) Other - incl. ob. limit	3,820	596	
	Direct Loan Limitation	48,024	7,492	
	Obligation Limitation	15,536,953	2,423,766	
	Outlays	10,071,246	1,571,112	
General Services Administration				
Real Property Activities				
Federal buildings fund				
47 4542 0 4 804	401(C) Authority - Off. Coll.	4,900	764	
	Outlays	4,900	764	
Personal Property Activities				
Federal supply service				
47 0116 0 1 804	Budget Authority	50,169	7,826	
	Outlays	48,664	7,592	
Expenses of transportation audit contracts				
47 5250 0 2 804	401(C) Authority	15,000	2,340	
	Outlays	2,945	459	
Information Resources Management Service				
Operating expenses, information resources management service				
47 0900 0 1 804	Budget Authority	33,881	5,285	
	Outlays	22,023	3,436	
Federal Property Resources Activities				
Operating expenses, federal property resources service				
47 0533 0 1 804	Budget Authority	11,488	1,792	
	Outlays	7,410	1,156	
Real property relocation				
47 0535 0 1 804	Budget Authority	4,176	651	
	Outlays	2,088	326	
Expenses, disposal of surplus real and related personal property				
47 5254 0 2 804	401(C) Authority	3,829	597	
	Outlays	2,297	358	
General Activities				
Allowances and office staff for former Presidents				
47 0105 0 1 802	Budget Authority	1,507	235	
	Outlays	1,356	212	
Expenses, presidential transition				
47 0107 0 1 802	Budget Authority	3,915	611	
	Outlays	3,915	611	
Office of Inspector General				
47 0108 0 1 804	Budget Authority	26,729	4,170	
	Outlays	22,853	3,565	
General management and administration, salaries and expenses				
47 0110 0 1 804	Budget Authority	128,703	20,078	
	Outlays	90,092	14,054	
Consumer information center fund				
47 4549 0 3 376	Budget Authority	1,421	222	
	401(C) Authority - Off. Coll.	536	84	
	Outlays	749	117	
TOTAL FOR General Services Administration				
	Budget Authority	261,989	40,870	
	401(C) Authority	18,829	2,937	
	401(C) Authority - Off. Coll.	5,436	848	
	Outlays	209,292	32,650	
Department of Housing and Urban Development				
Housing Programs				
Housing counseling assistance				
86 0156 0 1 506	Budget Authority	3,654	570	
Subsidized housing programs (Community development)				
86 0164 0 1 451	Budget Authority	5,220	814	
Subsidized housing programs (Housing assistance)				
86 0164 0 1 604	Budget Authority	7,490,960	1,168,589	
	Outlays	17,690	2,760	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-35
Congregate services program				
86 0178 0 1 604	Budget Authority	5,638	880	
Transitional and supportive housing demonstration program				
86 0188 0 1 604	Budget Authority	83,520	13,029	
	Outlays	1,670	261	
Rental housing assistance fund				
86 4041 0 3 604	401(C) Authority - Off. Coll.	50,000	7,800	
	Outlays	50,000	7,800	
Nonprofit sponsor assistance				
86 4042 0 3 604	Direct Loan Limitation	1,000	156	
	Outlays	236	37	
Federal Housing Administration fund				
86 4070 0 3 371	401(C) Other - incl. ob. limit	398,315	62,137	
	Direct Loan Limitation	107,897	16,832	
	Guaranteed Loan Limitation	100,224,000	15,634,944	
	Outlays	336,576	52,506	
Housing for the elderly or handicapped fund				
86 4115 0 3 371	Direct Loan Limitation	499,790	77,967	
Interstate land sales				
86 5270 0 2 376	401(C) Authority	626	98	
	Outlays	626	98	
Manufactured home inspection and monitoring				
86 5271 0 2 376	401(C) Authority	7,642	1,192	
	Outlays	6,259	976	
Public and Indian Housing Programs				
Payments for operation of low income housing projects				
86 0163 0 1 604	Budget Authority	1,780,550	277,766	
	Outlays	819,050	127,772	
Government National Mortgage Association				
Guarantees of mortgage-backed securities				
86 4238 0 3 371	401(C) Authority - Off. Coll.	5,588	872	
	Guaranteed Loan Limitation	149,942,000	23,390,952	
	Outlays	4,868	759	
Community Planning and Development				
Community development grants				
86 0162 0 1 451	Budget Authority	2,766,600	431,590	
	Guaranteed Loan Limitation	150,336	23,452	
	Outlays	110,664	17,264	
Urban homesteading				
86 0171 0 1 451	Budget Authority	13,781	2,150	
	Outlays	13,781	2,150	
Emergency shelter grants program				
86 0181 0 1 604	Budget Authority	48,546	7,573	
	Outlays	9,709	1,515	
Rental rehabilitation grants				
86 0182 0 1 451	Budget Authority	156,600	24,430	
	Outlays	15,660	2,443	
Rehabilitation loan fund				
86 4036 0 3 451	401(C) Authority - Off. Coll.	13,567	2,116	
	Direct Loan Limitation	70,000	10,920	
	Outlays	34,567	5,392	
Nehemiah housing opportunity program				
86 8888 0 1 451	Budget Authority	20,880	3,257	
	Outlays	2,088	326	
Policy Development and Research				
Research and technology				
86 0108 0 1 451	Budget Authority	17,957	2,801	
	Outlays	5,387	840	
Fair Housing and Equal Opportunity				
Fair housing activities				
86 0144 0 1 751	Budget Authority	10,440	1,629	
	Outlays	3,132	489	
Management and Administration				
Salaries and expenses, Including transfer of funds (Community developmen				
86 0143 0 1 451	Budget Authority	179,341	27,977	
	Outlays	149,750	23,361	
Salaries and expenses, Including transfer of funds (Housing assistance)				
86 0143 0 1 604	Budget Authority	162,592	25,364	
	Outlays	140,967	21,991	
Salaries and expenses, Including transfer of funds (Federal law enforcem				
86 0143 0 1 751	Budget Authority	15,567	2,428	
	Outlays	11,862	1,850	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-36
TOTAL FOR Department of Housing and Urban Development				
	Budget Authority	12,761,846	1,990,847	
	401(C) Authority	8,268	1,290	
	401(C) Authority - Off. Coll.	69,155	10,788	
	401(C) Other - incl. ob. limit	398,315	62,137	
	Direct Loan Limitation	678,687	105,875	
	Guaranteed Loan Limitation	250,316,336	39,049,348	
	Outlays	1,734,542	270,590	
National Aeronautics and Space Administration				
National Aeronautics and Space Administration				
Research and program management (Space flight)				
80 0103 0 1 253	Budget Authority	982,651	153,294	
	401(C) Authority - Off. Coll.	5,000	780	
	Outlays	846,149	132,000	
Research and program management (Space science, applications, and techno				
80 0103 0 1 254	Budget Authority	640,574	99,929	
	Outlays	548,331	85,540	
Research and program management (Supporting space activities)				
80 0103 0 1 255	Budget Authority	76,032	11,861	
	Outlays	65,083	10,153	
Research and program management (Air transportation)				
80 0103 0 1 402	Budget Authority	351,760	54,875	
	Outlays	301,107	46,972	
Space flight, control, and data communications				
80 0105 0 1 250	401(C) Authority - Off. Coll.	8,368	1,305	
	Outlays	8,368	1,305	
Space flight, control, and data communications (Space flight)				
80 0105 0 1 253	Budget Authority	3,668,512	572,288	
	Outlays	2,586,301	403,463	
Space flight, control, and data communications (Supporting space activit				
80 0105 0 1 255	Budget Authority	811,414	126,580	
	401(C) Authority	47,935	7,478	
	Outlays	494,213	77,097	
Construction of facilities (Space flight)				
80 0107 0 1 253	Budget Authority	76,630	11,954	
	Outlays	4,981	777	
Construction of facilities (Space science, applications, and technology)				
80 0107 0 1 254	Budget Authority	11,902	1,857	
	Outlays	774	121	
Construction of facilities (Supporting space activities)				
80 0107 0 1 255	Budget Authority	143,863	22,443	
	Outlays	9,351	1,459	
Construction of facilities (Air transportation)				
80 0107 0 1 402	Budget Authority	54,810	8,550	
	Outlays	3,563	556	
Research and development (Space flight)				
80 0108 0 1 253	Budget Authority	1,643,256	256,348	
	401(C) Authority - Off. Coll.	5,781	902	
	Outlays	796,187	124,206	
Research and development (Space science, applications, and technology)				
80 0108 0 1 254	Budget Authority	2,281,036	355,841	
	Outlays	1,163,328	181,479	
Research and development (Supporting space activities)				
80 0108 0 1 255	Budget Authority	19,627	3,062	
	Outlays	12,620	1,969	
Research and development (Air transportation)				
80 0108 0 1 402	Budget Authority	454,036	70,830	
	Outlays	232,012	36,194	
Science, space, and technology education trust fund				
80 8978 0 7 503	401(C) Authority	1,000	156	
	Outlays	1,000	156	
TOTAL FOR National Aeronautics and Space Administration				
	Budget Authority	11,216,103	1,749,712	
	401(C) Authority	48,935	7,634	
	401(C) Authority - Off. Coll.	19,149	2,987	
	Outlays	7,073,368	1,103,447	
Office of Personnel Management				
Office of Personnel Management				
Salaries and expenses				
24 0100 0 1 805	Budget Authority	115,172	17,967	
	Outlays	109,413	17,068	
Government payment for annuitants, employees health benefits				
24 0206 0 1 551	401(C) Authority	3,780,169	589,706	
Government payment for annuitants, employee life insurance benefits				
24 0500 0 1 602	Budget Authority	2,700	421	
	Outlays	2,100	328	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-37
Civil service retirement and disability fund				
24 8135 0 7 602	Obligation Limitation	69,450	10,834	
	Outlays	69,450	10,834	
Employees life insurance fund				
24 8424 0 8 602	401(C) Other - incl. ob. limit	772	120	
	Outlays	772	120	
Employees health benefits fund				
24 8440 0 8 551	Obligation Limitation	10,650	1,661	
	Outlays	10,650	1,661	
Retired employees health benefits fund				
24 8445 0 8 551	Obligation Limitation	130	20	
	Outlays	130	20	
TOTAL FOR Office of Personnel Management				
	Budget Authority	117,872	18,388	
	401(C) Authority	3,780,169	589,706	
	401(C) Other - incl. ob. limit	772	120	
	Obligation Limitation	80,230	12,515	
	Outlays	192,515	30,031	
Small Business Administration				
Small Business Administration				
Salaries and expenses				
73 0100 0 1 376	Budget Authority	242,562	37,840	
	Outlays	245,317	38,270	
Disaster loan fund				
73 4153 0 3 453	Direct Loan Limitation	323,000	50,388	
	Outlays	138,000	21,528	
Business loan and investment fund				
73 4154 0 3 376	Direct Loan Limitation	94,000	14,664	
	Guaranteed Loan Limitation	3,910,000	609,960	
	Outlays	53,000	8,268	
Surety bond guarantees revolving fund				
73 4156 0 3 376	Guaranteed Loan Limitation	1,301,000	202,956	
TOTAL FOR Small Business Administration				
	Budget Authority	242,562	37,840	
	Direct Loan Limitation	417,000	65,052	
	Guaranteed Loan Limitation	5,211,000	812,916	
	Outlays	436,317	68,066	
Department of Veterans Affairs				
Veterans Benefits Administration				
Readjustment benefits				
36 0137 0 1 702	401(C) Authority	212,119	33,091	
	Outlays	196,352	30,631	
Burial benefits and miscellaneous assistance				
36 0155 0 1 701	401(C) Authority	138,120	21,547	
	Outlays	138,118	21,546	
Veterans Health Services and Research Administration				
Grants to the Republic of the Philippines				
36 0144 0 1 703	Budget Authority	522	81	
	Outlays	26	4	
Medical administration and miscellaneous operating expenses				
36 0152 0 1 703	Budget Authority	51,060	7,965	
	Outlays	37,784	5,894	
Medical care				
36 0160 0 1 703	Budget Authority	950,692	148,308	
	Budget Authority - Spec. Rules	212,863	212,863	
	401(C) Authority - Spec. Rules	408	408	
	Outlays	1,056,906	318,712	
Medical and prosthetic research				
36 0161 0 1 703	Budget Authority	224,279	34,988	
	Outlays	174,938	27,290	
Departmental Administration				
Construction, major projects				
36 0110 0 1 703	Budget Authority	373,841	58,320	
	Outlays	12,337	1,924	
Construction, minor projects				
36 0111 0 1 703	Budget Authority	102,099	15,927	
	Outlays	52,946	8,259	
General operating expenses				
36 0151 0 1 705	Budget Authority	831,256	129,677	
	Outlays	748,130	116,709	
Office of the Inspector General				
36 0170 0 1 705	Budget Authority	21,851	3,409	
	Outlays	19,666	3,068	
Grants for construction of state extended care facilities				
36 0181 0 1 703	Budget Authority	43,848	6,840	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-38
Grants for the construction of State veterans cemeteries				
36 0183 0 1 705	Budget Authority	9,396	1,466	
Parking garage revolving fund				
36 4538 0 3 703	Budget Authority	27,144	4,234	
	401(C) Authority - Off. Coll.	647	101	
	Outlays	2,004	313	
TOTAL FOR Department of Veterans Affairs				
	Budget Authority	2,635,988	411,215	
	Budget Authority - Spec. Rules	212,863	212,863	
	401(C) Authority	350,239	54,638	
	401(C) Authority - Off. Coll.	647	101	
	401(C) Authority - Spec. Rules	408	408	
	Outlays	2,439,207	534,350	
Other Independent Agencies				
Other Independent Agencies				
Space Council				
11 0020 0 1 802	Budget Authority	193	30	
	Outlays	174	27	
White House Conference on Library and Information Sciences				
95 2701 0 1 503	Budget Authority	1,864	291	
	Outlays	1,633	255	
ACTION				
Operating expenses				
44 0103 0 1 506	Budget Authority	179,201	27,955	
	Outlays	108,954	16,997	
Administrative Conference of the United States				
Salaries and expenses				
95 1700 0 1 751	Budget Authority	1,989	310	
	Outlays	1,591	248	
Advisory Committee on Federal Pay				
Salaries and expenses				
95 1800 0 1 805	Budget Authority	219	34	
	Outlays	208	32	
Advisory Council on Historic Preservation				
Salaries and expenses				
95 2300 0 1 303	Budget Authority	1,899	296	
	Outlays	1,709	267	
American Battle Monuments Commission				
Salaries and expenses				
74 0100 0 1 705	Budget Authority	16,127	2,516	
	Outlays	13,708	2,138	
Architectural and Transportation Barriers Compliance Board				
Salaries and expenses				
95 3200 0 1 751	Budget Authority	2,014	314	
	Outlays	1,551	242	
Arms Control and Disarmament Agency				
Arms control and disarmament activities				
94 0100 0 1 153	Budget Authority	32,881	5,129	
	Outlays	21,800	3,401	
Barry Goldwater Scholarship and Excellence in Education Foundation				
Barry Goldwater Scholarship and Excellence in Education Foundation				
95 8281 0 7 502	401(C) Other - incl. ob. limit	1,307	204	
	Outlays	1,307	204	
Board for International Broadcasting				
Grants and expenses				
95 1145 0 1 154	Budget Authority	203,501	31,746	
	Outlays	195,361	30,476	
Israel relay station				
95 1146 0 1 154	Budget Authority	34,462	5,376	
	Outlays	10,339	1,613	
Commission of Fine Arts				
Salaries and expenses				
95 2600 0 1 451	Budget Authority	507	79	
	Outlays	464	72	
National capital arts and cultural affairs				
95 2602 0 1 503	Budget Authority	5,220	814	
	Outlays	5,220	814	
Commission on Civil Rights				
Salaries and expenses				
95 1900 0 1 751	Budget Authority	6,087	950	
	Outlays	5,174	807	
Committee for Purchase from the Blind and other Severely Handicapped				
Salaries and expenses				
95 2000 0 1 505	Budget Authority	919	143	
	Outlays	872	136	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-39
Commodity Futures Trading Commission				
Commodity Futures Trading Commission				
95 1400 0 1 376	Budget Authority	37,079	5,784	
	Outlays	32,259	5,032	
Consumer Product Safety Commission				
Salaries and expenses				
61 0100 0 1 554	Budget Authority	36,806	5,742	
	401(C) Authority - Off. Coll.	10	2	
	Outlays	31,295	4,882	
Corporation for Public Broadcasting				
Public broadcasting fund				
20 0151 0 1 503	401(C) Authority	232,648	36,293	
	Outlays	232,648	36,293	
Court of Veterans Appeals				
Salaries and expenses				
95 0300 0 1 705	Budget Authority	3,309	516	
	Outlays	2,978	465	
District of Columbia				
Federal payment to the District of Columbia				
20 1700 0 1 806	Budget Authority	561,578	87,606	
	Outlays	561,578	87,606	
Equal Employment Opportunity Commission				
Salaries and expenses				
45 0100 0 1 751	Budget Authority	192,701	30,061	
	Outlays	170,155	26,544	
Export-Import Bank of the United States				
Export-Import Bank of the United States				
83 4027 0 3 155	Budget Authority	114,840	17,915	
	Direct Loan Limitation	725,580	113,190	
	Guaranteed Loan Limitation	10,648,800	1,661,213	
	Obligation Limitation	21,900	3,416	
	Outlays	128,400	20,030	
Farm Credit Administration				
Revolving fund for administrative expenses				
78 4131 0 3 351	Obligation Limitation	39,776	6,205	
	Outlays	39,776	6,205	
Farm Credit System Financial Assistance Corporation				
Farm credit assistance fund				
78 4133 0 3 351	401(C) Authority	500,000	78,000	
	Outlays	475,000	74,100	
Federal Communications Commission				
Salaries and expenses				
27 0100 0 1 376	Budget Authority	106,599	16,629	
	Outlays	100,203	15,632	
Federal Election Commission				
Salaries and expenses				
95 1600 0 1 808	Budget Authority	16,725	2,609	
	Outlays	15,053	2,348	
Federal Emergency Management Agency				
Salaries and expenses (Defense-related activities)				
58 0100 0 1 054	Budget Authority	73,485	11,464	
	Outlays	66,137	10,317	
Salaries and expenses (Disaster relief and insurance)				
58 0100 0 1 453	Budget Authority	73,385	11,448	
	Outlays	66,047	10,303	
Emergency management planning and assistance (Defense-related activities				
58 0101 0 1 054	Budget Authority	267,529	41,735	
	Outlays	147,141	22,954	
Emergency management planning and assistance (Disaster relief and insura				
58 0101 0 1 453	Budget Authority	27,336	4,264	
	Outlays	15,035	2,345	
Emergency food and shelter program				
58 0103 0 1 605	Budget Authority	131,544	20,520	
	Outlays	131,544	20,520	
Disaster relief				
58 0104 0 1 453	Budget Authority	1,365,552	213,026	
	Outlays	83,760	13,067	
National insurance development fund				
58 4235 0 3 451	401(C) Authority	220	34	
	Outlays	220	34	
Federal Labor Relations Authority				
Salaries and expenses				
54 0100 0 1 805	Budget Authority	18,753	2,925	
	Outlays	17,253	2,691	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-40
Federal Maritime Commission				
Salaries and expenses				
65 0100 0 1 403	Budget Authority	14,517	2,265	
	Outlays	13,065	2,038	
Federal Mediation and Conciliation Service				
Salaries and expenses				
93 0100 0 1 505	Budget Authority	27,569	4,301	
	Outlays	25,060	3,909	
Federal Mine Safety and Health Review Commission				
Salaries and expenses				
95 2800 0 1 554	Budget Authority	4,305	672	
	Outlays	4,004	625	
Federal Trade Commission				
Salaries and expenses				
29 0100 0 1 376	Budget Authority	70,753	11,037	
	Outlays	65,093	10,155	
TOTAL FOR Other Independent Agencies				
	Budget Authority	3,631,448	566,502	
	401(C) Authority	732,868	114,327	
	401(C) Authority - Off. Coll.	10	2	
	401(C) Other - incl. ob. limit	1,307	204	
	Direct Loan Limitation	725,580	113,190	
	Guaranteed Loan Limitation	10,648,800	1,661,213	
	Obligation Limitation	61,676	9,621	
	Outlays	2,793,769	435,824	
Other Independent Agencies				
Other Independent Agencies				
Defense Nuclear Safety Board				
31 8880 0 1 053	Budget Authority	7,000	749	
	Outlays	6,650	712	
Harry S Truman Scholarship Foundation				
Harry S Truman memorial scholarship trust fund				
95 8296 0 7 502	401(C) Other - incl. ob. limit	3,061	478	
	Outlays	3,053	476	
American Revolution Bicentennial Administration				
American Revolution Bicentennial Administration				
76 1900 0 1 806	Budget Authority	5,053	788	
	Outlays	4,548	709	
Christopher Columbus Quincentennary Jubilee Commission				
Salaries and expenses				
76 0800 0 1 376	Budget Authority	225	35	
	Outlays	203	32	
Commission on the Bicentennial of the U.S. Constitution				
Salaries and expenses				
76 0054 0 1 808	Budget Authority	7,294	1,138	
	Outlays	6,309	984	
Franklin Delano Roosevelt Memorial Commission				
Salaries and expenses				
76 0700 0 1 808	Budget Authority	29	5	
	Outlays	24	4	
Institute of American Indian and Alaska Native Culture and Arts Developm				
Salaries and expenses				
95 2900 0 1 502	Budget Authority	3,230	504	
	Outlays	3,230	504	
Intelligence Community Staff				
Intelligence community staff				
95 0400 0 1 054	Budget Authority	25,161	2,692	
	Outlays	16,355	1,750	
Advisory Commission on Intergovernmental Relations				
Salaries and expenses				
55 0100 0 1 808	Budget Authority	1,112	173	
	Outlays	946	148	
Appalachian Regional Commission				
Appalachian regional development programs				
46 0200 0 1 452	Budget Authority	150,000	23,400	
	Outlays	41,945	6,543	
Delaware River Basin Commission				
Salaries and expenses				
46 0100 0 1 301	Budget Authority	214	33	
	Outlays	199	31	
Contribution to Delaware River Basin Commission				
46 0102 0 1 301	Budget Authority	345	54	
	Outlays	345	54	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-41
Interstate Commission on the Potomac River Basin				
Contribution to Interstate Commission on the Potomac River Basin				
46 0446 0 1 304	Budget Authority	300	47	
	Outlays	300	47	
Susquehanna River Basin Commission				
Salaries and expenses				
46 0500 0 1 301	Budget Authority	200	31	
	Outlays	189	29	
Contribution to Susquehanna River Basin Commission				
46 0501 0 1 301	Budget Authority	276	43	
	Outlays	276	43	
International Trade Commission				
Salaries and expenses				
34 0100 0 1 153	Budget Authority	38,317	5,977	
	Outlays	32,991	5,147	
Interstate Commerce Commission				
Salaries and expenses				
30 0100 0 1 401	Budget Authority	46,109	7,193	
	Outlays	41,498	6,474	
James Madison Memorial Fellowship Foundation				
James Madison Memorial Fellowship Trust Fund				
95 8282 0 7 502	401(C) Other - incl. ob. limit	500	78	
	Outlays	250	39	
Japan-United States Friendship Commission				
Japan-United States friendship trust fund				
95 8025 0 7 154	Budget Authority	1,482	231	
	Outlays	1,482	231	
Legal Services Corporation				
Payment to the Legal Services Corporation				
20 0501 0 1 752	Budget Authority	322,131	50,252	
	Outlays	283,475	44,222	
Marine Mammal Commission				
Salaries and expenses				
95 2200 0 1 302	Budget Authority	1,017	159	
	Outlays	903	141	
Merit Systems Protection Board				
Salaries and expenses				
41 0100 0 1 805	Budget Authority	21,884	3,414	
	Outlays	18,601	2,902	
Office of the Special Counsel				
41 0101 0 1 805	Budget Authority	5,352	835	
	Outlays	4,918	767	
National Archives and Records Administration				
Operating expenses				
88 0300 0 1 804	Budget Authority	129,022	20,127	
	Outlays	103,218	16,102	
National archives trust fund				
88 8436 0 8 804	401(C) Authority - Off. Coll.	10,555	1,647	
	Outlays	10,555	1,647	
National Capital Planning Commission				
Salaries and expenses				
95 2500 0 1 451	Budget Authority	3,166	494	
	Outlays	2,913	454	
National Commission on Libraries and Information Science				
Salaries and expenses				
95 2700 0 1 503	Budget Authority	791	123	
	Outlays	633	99	
National Commission on Migrant Education				
Salaries and expenses				
95 0600 0 1 501	Budget Authority	2,080	324	
	Outlays	166	26	
National Council on Disability				
Salaries and expenses				
95 3500 0 1 506	Budget Authority	1,229	192	
	Outlays	983	153	
National Endowment for the Arts				
National endowment for the arts: Grants and administration				
59 0100 0 1 503	Budget Authority	176,898	27,596	
	Outlays	59,615	9,300	
National Endowment for the Humanities				
National endowment for the humanities: Grants and administration				
59 0200 0 1 503	Budget Authority	160,080	24,972	
	Outlays	72,036	11,238	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-42
Institute of Museum Services				
Institute of Museum Services: Grants and administration				
59 0300 0 1 503	Budget Authority	23,272	3,630	
	Outlays	6,004	937	
National Labor Relations Board				
Salaries and expenses				
63 0100 0 1 505	Budget Authority	146,586	22,867	
	Outlays	137,937	21,518	
National Mediation Board				
Salaries and expenses				
95 2400 0 1 505	Budget Authority	6,924	1,080	
	Outlays	5,290	825	
National Science Foundation				
Research and related activities				
49 0100 0 1 251	Budget Authority	1,692,189	263,981	
	Outlays	824,035	128,549	
Science and engineering education activities				
49 0106 0 1 251	Budget Authority	178,524	27,850	
	Outlays	26,600	4,150	
U.S. Antarctic program				
49 0200 0 1 251	Budget Authority	136,764	21,335	
	Outlays	67,698	10,561	
National Transportation Safety Board				
Salaries and expenses				
95 0310 0 1 407	Budget Authority	27,062	4,222	
	Outlays	24,356	3,800	
Neighborhood Reinvestment Corporation				
Payment to the Neighborhood Reinvestment Corporation				
82 1300 0 1 451	Budget Authority	20,352	3,175	
	Outlays	20,352	3,175	
Nuclear Regulatory Commission				
Salaries and expenses				
31 0200 0 1 276	Budget Authority	442,100	68,968	
	Outlays	331,575	51,726	
Office of the Inspector General				
31 0300 0 1 276	Budget Authority	2,900	452	
	Outlays	2,465	385	
TOTAL FOR Other Independent Agencies				
	Budget Authority	3,786,670	589,141	
	401(C) Authority - Off. Coll.	10,555	1,647	
	401(C) Other - incl. ob. limit	3,561	556	
	Outlays	2,165,121	336,634	
Other Independent Agencies				
Occupational Safety and Health Review Commission				
Salaries and expenses				
95 2100 0 1 554	Budget Authority	6,245	974	
	Outlays	5,745	896	
Pennsylvania Avenue Development Corporation				
Salaries and expenses				
42 0100 0 1 451	Budget Authority	2,485	388	
	Outlays	2,013	314	
Public development				
42 0102 0 1 451	Budget Authority	3,318	518	
	Outlays	2,489	388	
Land acquisition and development fund				
42 4084 0 3 451	401(C) Authority - Off. Coll.	10,000	1,560	
	Outlays	10,000	1,560	
Postal Service				
Payment to the Postal Service fund				
18 1001 0 1 372	Budget Authority	455,619	71,077	
	Outlays	455,619	71,077	
Postal Service				
18 4020 0 3 372	401(C) Other - incl. ob. limit	1,097,124	171,151	
Railroad Retirement Board				
Railroad social security equivalent benefit account				
60 8010 0 7 601	Obligation Limitation	28,123	4,387	
	Outlays	28,123	4,387	
Rail Industry Pension Fund				
60 8011 0 7 601	Obligation Limitation	33,625	5,246	
	Outlays	33,625	5,246	
Supplemental Annuity Pension Fund				
60 8012 0 7 601	Obligation Limitation	2,300	359	
	Outlays	2,300	359	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-43
Securities and Exchange Commission				
Salaries and expenses				
50 0100 0 1 376	Budget Authority	152,098	23,727	
	Outlays	138,409	21,592	
Selective Service System				
Salaries and expenses				
90 0400 0 1 054	Budget Authority	28,046	3,001	
	Outlays	23,026	2,464	
Smithsonian Institution				
Salaries and expenses				
33 0100 0 1 503	Budget Authority	225,275	35,143	
	Outlays	198,918	31,031	
Construction and improvements, National Zoological Park				
33 0129 0 1 503	Budget Authority	5,538	864	
	Outlays	2,492	389	
Repair and restoration of buildings				
33 0132 0 1 503	Budget Authority	21,647	3,377	
	Outlays	8,659	1,351	
Construction				
33 0133 0 1 503	Budget Authority	9,036	1,410	
	Outlays	3,614	564	
Salaries and expenses, National Gallery of Art				
33 0200 0 1 503	Budget Authority	40,469	6,313	
	Outlays	34,682	5,410	
Repair, restoration, and renovation of buildings				
33 0201 0 1 503	Budget Authority	784	122	
	Outlays	188	29	
Salaries and expenses, Woodrow Wilson International Center for Scholars				
33 0400 0 1 503	Budget Authority	4,486	700	
	Outlays	2,754	430	
Payment to the endowment challenge fund				
33 0401 0 1 503	Budget Authority	313	49	
	Outlays	157	24	
Endowment challenge fund				
33 8188 0 7 503	401(C) Authority	270	42	
	Outlays	270	42	
Canal Zone biological area fund				
33 8190 0 7 503	401(C) Authority	150	23	
	Outlays	135	21	
TOTAL FOR Other Independent Agencies				
	Budget Authority	955,359	147,663	
	401(C) Authority	420	65	
	401(C) Authority - Off. Coll.	10,000	1,560	
	401(C) Other - incl. ob. limit	1,097,124	171,151	
	Obligation Limitation	64,048	9,992	
	Outlays	953,218	147,574	
Other Independent Agencies				
Other Temporary Commissions				
State Justice Institute: Salaries and expenses				
48 0052 0 1 752	Budget Authority	11,485	1,792	
	Outlays	3,101	484	
Commission on Agricultural Workers: Salaries and expenses				
48 0057 0 1 352	Budget Authority	532	83	
	Outlays	479	75	
National Commission on Responsibilities for Financing Postsecondary Educ				
48 0400 0 1 502	Budget Authority	826	129	
	Outlays	617	96	
Nuclear Waste Technical Review Board: Salaries and expenses				
48 0500 0 1 271	Budget Authority	2,000	312	
	Outlays	1,700	265	
Office of the Nuclear Waste Negotiator: Salaries and expenses				
48 0700 0 1 271	Budget Authority	2,000	312	
	Outlays	1,700	265	
Navajo and Hopi Indian Relocation Commission: Salaries and expenses				
48 1100 0 1 808	Budget Authority	28,649	4,469	
	Outlays	18,049	2,816	
Interagency Council on the Homeless				
48 1300 0 1 604	Budget Authority	1,145	179	
	Outlays	678	106	
Commission for the Study of International Migration and Cooperative Econ				
48 1400 0 1 153	Budget Authority	1,363	213	
	Outlays	818	128	
National Commission to Prevent Infant Mortality				
48 1500 0 1 808	Budget Authority	688	107	
	Outlays	550	86	

AGENCY, BUREAU AND ACCOUNT TITLE		BASE	SEQUESTER	A-44
International Cultural and Trade Center Commission: Salaries and expense				
48 1800 0 1 804	Budget Authority	845	132	
	Outlays	423	66	
National Economic Commission: Salaries and expenses				
48 2100 0 1 802	Budget Authority	735	115	
	Outlays	674	105	
Tennessee Valley Authority				
Tennessee Valley Authority fund (Energy supply)				
64 4110 0 3 271	401(C) Authority - Off. Coll.	73,500	11,466	
	Outlays	64,680	10,090	
Tennessee Valley Authority fund (Area and regional development)				
64 4110 0 3 452	Budget Authority	121,000	18,876	
	Outlays	29,767	4,644	
United States Holocaust Memorial Council				
Holocaust Memorial Council				
95 3300 0 1 808	Budget Authority	2,372	370	
	Outlays	1,876	293	
United States Information Agency				
Salaries and expenses				
67 0201 0 1 154	Budget Authority	658,382	102,708	
	Outlays	519,464	81,036	
East West Center				
67 0202 0 1 154	Budget Authority	20,880	3,257	
	Outlays	19,732	3,078	
Radio construction				
67 0204 0 1 154	Budget Authority	67,862	10,586	
	Outlays	38,138	5,950	
Radio broadcasting to Cuba				
67 0208 0 1 154	Budget Authority	11,861	1,850	
	Outlays	9,489	1,480	
Educational and cultural exchange programs				
67 0209 0 1 154	Budget Authority	156,642	24,436	
	Outlays	71,272	11,118	
National Endowment for Democracy				
67 0210 0 1 154	Budget Authority	16,495	2,573	
	Outlays	6,598	1,029	
United States Institute of Peace				
United States Institute of Peace				
95 1300 0 1 153	Budget Authority	7,280	1,136	
	Outlays	5,824	909	
United States Sentencing Commission				
Salaries and expenses				
10 0938 0 1 752	Budget Authority	5,508	859	
	Outlays	4,957	773	
TOTAL FOR Other Independent Agencies				
	Budget Authority	1,118,550	174,494	
	401(C) Authority - Off. Coll.	73,500	11,466	
	Outlays	800,586	124,892	
REPORT TOTAL				
	Budget Authority	470,085,373	58,123,024	
	Budget Authority - Spec. Rules	244,174	244,174	
	401(C) Authority	43,604,454	6,802,299	
	401(C) Authority - Off. Coll.	2,060,465	321,430	
	401(C) Other - incl. ob. limit	3,293,620	513,804	
	401(C) Authority - Spec. Rules	1,883,509	1,883,509	
	Direct Loan Limitation	21,226,535	3,311,338	
	Direct Loan Floor	2,052,778	320,233	
	Guaranteed Loan Limitation	276,780,881	43,177,817	
	Guaranteed Loan Floor	0	0	
	Obligation Limitation	25,408,791	3,963,775	
	Unobligated Balances - Defense	39,585,864	4,235,690	
	Outlays	315,401,721	41,441,027	

APPENDIX B

ATOMIC ENERGY DEFENSE SEQUESTRATION

REDUCTIONS BY PROGRAM, PROJECT, AND ACTIVITY

(Fiscal year 1990, in thousands of dollars)

APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE		SEQUESTRATION		
	BA	Unob. Bal.	BA	Unob. Bal.	Outlays
ATOMIC ENERGY DEFENSE ACTIVITIES					
I. WEAPONS ACTIVITIES					
A. Research and development					
1. Research and development - Core					
Operating expenses	802,770	15	85,896	2	53,257
Capital equipment	93,875	92	10,045	10	6,234
Construction:					
90-D-101 General plant projects, various locations	20,730	10	2,218	1	1,376
90-D-102 Nuclear weapons research, development, & testing facilities revitalization, Phase III, various locations	1,000		107		66
89-D-101 General plant projects, 88-D-105 Special nuclear materials R&D laboratory replacement, LANL, Los Alamos, N	44,000		4,708		2,919
88-D-106 Nuclear weapons research, development, & testing facilities revitalization, Phase II, various locations	75,400		8,068		5,002
85-D-102 Nuclear weapons research, development, and testing facilities revitalization		54		6	4
2. Nuclear directed energy weapons					
Operating expenses	97,000		10,379		6,435
Capital equipment	6,000	177	642	19	410
Construction:					
88-D-106 Nuclear weapons research, development and testing facilities revitalization, Phase II, (NDER facility at LLNL)	19,000		2,033		1,260
3. Inertial fusion					
Operating expenses	165,200	1	17,676	0	10,959
Capital equipment	8,740		935		580
4. Environment, safety & health					
Construction:					
90-D-103 ES&H Improvements various locations	10,700		1,145		710
88-D-102 Sanitary wastewater systems consolidation, LANL, Los Alamos, NM	3,100		332		206
86-D-103 Decontamination and waste treatment facility, LLNL, Livermore, CA	5,200	11,900	556	1,273	1,134
5. Safeguards & security					
Construction:					
88-D-104 Safeguards and security upgrade, Phase II, LANL, Los Alamos, NM	1,000		107		66
87-D-104 Safeguards and security enhancement II, LLNL, Livermore, CA	7,000	1,000	749	107	531
B. Testing					
1. Testing - Core					
Operating expenses	421,700	201	45,122	22	27,989
Capital equipment	40,420		4,325		2,681
Construction:					
90-D-101 General plant projects, various locations	7,400		792		491
89-D-101 General plant projects, various					
2. Nuclear directed energy weapons					
Operating expenses	90,000		9,630		5,971
Capital equipment	8,000		856		531
3. Safeguards & security					
Construction:					
85-D-105 Combined device assembly facility, Nevada Test Site, NV	9,460		1,012		628
C. Production and surveillance					
Operating expenses	2,100,000	148	224,700	16	139,324
Capital equipment	125,600		13,439		8,332
Construction:					
Decision costs - construction:					
90-D-122 Production capabilities for the nuclear depth/strike bomb (ND/SB), various locations	8,000		856		531
90-D-123 Follow on to lance warhead missile (SICBM) warhead production facs,					
87-D-122 Short-range attack missile II (SRAM II) warhead production facilities, various locations	41,200		4,408		2,733

APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE		SEQUESTRATION		
	BA	Unob. Bal.	BA	Unob. Bal.	Outlays
Production base - construction:					
Facilities capability assurance program:					
88-D-122 Facilities capability assurance program (FCAP), various locations	83,099		8,892		5,513
Production support facilities:					
90-D-121 General plant projects, various locations	30,850		3,301		2,047
90-D-124 High explosives (HE) synthesis facility, Pantex Plant, Amarillo, TX	1,800		193		119
89-D-121 General plant projects, 89-D-122 Production waste storage facility, Y-12 Plant, Oak Ridge, TN	9,200		984		610
89-D-125 Plutonium recovery modification project (Bldg. 371), Rocky Flats Plant, Golden, CO	45,000		4,815		2,985
88-D-125 High explosive machining facility, Pantex Plant, Amarillo, TX	36,000		3,852		2,388
86-D-130 Tritium loading facility replacement, Savannah River Plant, Aiken, SC	24,025		2,571		1,594
85-D-112 Enriched uranium recovery improve-					
Environment, safety & health:					
90-D-125 Steam plant ash disposal facility, Y-12 Plant, Oak Ridge, TN	1,500		161		100
90-D-126 ES&H Enhancements various locations	26,700		2,857		1,771
89-D-126 Environmental, safety, & health upgrade, Phase II, Mound Plant, Miamisburg, OH	3,500		375		232
88-D-124 Fire protection upgrading, various locations	5,400		578		358
88-D-126 Personnel radiological monitoring 86-D-123 Environmental hazards elimination, 84-D-124 Environmental improvements, Y-12					
Safeguards & security:					
88-D-123 Security enhancement, Pantex Plant, Amarillo, TX	5,500		589		365
84-D-211 Safeguards and site security					
D. Program direction					
Operating expenses		1,278		137	85
1. Weapons program	88,853		9,507		5,895
2. Community assistance	9,050		968		600
Capital equipment	1,735		186		115
II. MATERIALS PRODUCTION					
A. Reactor operations					
Operating expenses	578,049	4,500	61,851	482	38,646
Construction:					
Environment, safety & health projects:					
90-D-142 Coal storage facility environmental upgrade, Feed Materials Production Center, Fernald, OH	920		98		61
90-D-150 Reactor safety assurance, Savannah River, SC	12,700		1,359		843
89-D-141 M-Area waste disposal, Savannah River, SC	7,800		835		517
89-D-142 Reactor effluent cooling water thermal mitigation, Savannah River, SC	40,000		4,280		2,654
89-D-148 Improved reactor confinement system Savannah River, SC	7,100		760		471
86-D-152 Reactor electrical distribution system, Savannah River, SC	3,164		339		210
B. Processing of nuclear materials					
Operating expenses	589,609	5	63,088	1	39,115
Construction:					
Programmatic projects:					
86-D-148 Special isotope separation project, Idaho Falls, ID	40,000		4,280		2,654
Environment, safety & health projects:					
90-D-141 Idaho chemical processing plant fire protection, Idaho Falls, ID	3,500		375		232
90-D-143 Plutonium finishing plant fire safety and loss limitation, Richland, WA	800		86		53
C. Supporting services					
Operating expenses	282,868	60	30,267	6	18,769

APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE		SEQUESTRATION		
	BA	Unob. Bal.	BA	Unob. Bal.	Outlays
Construction:					
Programmatic projects:					
90-D-146 General plant projects, various locations	36,802		3,938		2,441
90-D-151 Engineering Ctr, Savannah River, SC	7,000		749		464
89-D-146 General plant projects, various					
86-D-149 Productivity retention program, Phase I, II, III, IV and V, various location	81,780		8,750		5,425
85-D-139 Fuel processing restoration, Idaho Fuel Processing Facility, INEL, ID	75,000		8,025		4,976
82-D-124 Restoration of production capabilities, Phases II, III, IV, & V,					
Environment, safety & health projects:					
90-D-149 Plantwide fire protection, phase I, Savannah River, SC	4,900		524		325
87-D-152 Environmental protection plantwide,					
87-D-159 Environmental, health, and safety improvements, Phases I, II, III, & IV, Feed Materials Production Center, Fernald, OH	55,111		5,897		3,656
Safeguards & security projects:					
89-D-140 Additional separations safeguards, Savannah River, SC	10,300		1,102		683
88-D-153 Additional reactor safeguards, Savannah River, SC	6,400		685		425
86-D-156 Plantwide safeguards systems, Savannah River, SC	6,181		661		410
84-D-134 Safeguards and security improve-					
D. Enriched material	168,900		18,072		11,205
E. Capital equipment	104,425	25	11,173	3	6,929
F. Program direction	35,265	1,050	3,773	112	2,409
III. DEFENSE WASTE AND ENVIRONMENTAL RESTORATION					
A. Environmental restoration - operating expenses	572,000	10	61,204	1	37,947
B. Waste operations and projects					
Operating expenses	699,696	43,005	74,867	4,602	49,271
Construction					
Programmatic projects:					
90-D-170 GPP, various locations	29,036		3,107		1,926
89-D-170 General plant projects, waste operations and projects, and waste research and					
89-D-171 INEL road renovation, ID	7,400		792		491
89-D-174 Replacement high level waste evaporator, Savannah River, SC	9,360		1,002		621
88-D-173 Hanford waste vitrification plant (HWVP), Richland, WA	29,100		3,114		1,930
87-D-173 242-A Evaporator crystallizer upgrade, Richland, WA	700		75		46
87-D-180 Burial ground expansion, Savannah					
87-D-181 Diversion box and pump pit containment buildings, Savannah River, SC	2,790		299		185
81-T-105 Defense waste processing facility,					
Environment, safety & health projects:					
90-D-171 Laboratory ventilation and electrical system upgrade, Richland, WA	1,100		118		73
90-D-172 Aging waste transfer line, Richland, WA	1,300		139		86
90-D-173 B-plant canyon crane replacement, Richland, WA	1,500		161		100
90-D-174 Decontamination laundry facility, Richland, WA	2,800		300		186
90-D-175 Landlord program safety compliance-I, Richland, WA	4,200		449		279
90-D-176 Transuranic (TRU) waste facility, Savannah River, SC	3,100		332		206
90-D-177 RWMC Transuranic (TRU) waste treatment and storage facility, Idaho	5,000		535		332
90-D-178 TSA retrieval containment building, Idaho	6,000		642		398
89-D-172 Hanford environmental compliance, Richland, WA	27,600		2,953		1,831
89-D-173 Tank farm ventilation upgrade, Richland, WA	15,400		1,648		1,022

APPENDIX B. SEQUESTRABLE AND SEQUESTERED RESOURCES FOR ATOMIC ENERGY DEFENSE ACTIVITIES
(In thousands of dollars)

Program, Project, or Activity	BASE		SEQUESTRATION		
	BA	Unob. Bal.	BA	Unob. Bal.	Outlays
89-D-175 Hazardous waste/mixed waste disposal facility, Savannah River, SC	6,440		689		427
87-D-177 Test reactor area liquid radioactive 83-D-148 Non-radioactive hazardous waste management, Savannah River, SC	14,140		1,513		938
Safeguards & security projects:					
C. Waste research and development	115,225	6	12,329	1	7,644
D. Hazardous waste and compliance technology	40,163		4,297		2,664
E. Transportation management	11,841		1,267		786
F. Capital equipment	50,126		5,363		3,325
G. Program direction	2,950		316		196
IV. NEW PRODUCTION REACTORS					
A. New production reactor support					
Operating expenses	203,500		21,775		13,500
Construction:					
88-D-154 New production reactor capacity, various locations (design only)	100,000		10,700		6,634
V. NAVAL REACTORS DEVELOPMENT					
A. Plant development					
Operating expenses	87,000	415	9,309	44	5,799
B. Reactor development					
Operating expenses	245,300		26,247		16,273
C. Reactor operation and evaluation					
Operating expenses	217,000		23,219		14,396
D. Capital equipment	54,000		5,778		3,582
E. Construction:					
90-N-101 General plant projects, various locations	8,500		910		564
90-N-102 Expended core facility dry cell project, Naval Reactors Facility, ID	3,600		385		239
90-N-103 Advanced test reactor off-gas treatment system, INEL, ID	200		21		13
90-N-104 Facility renovations, Knolls Atomic Power Laboratory (KAPL), Niskayuna, NY	3,900		417		259
89-N-101 General plant projects,					
89-N-102 Heat transfer test facility, KAPL, Niskayuna, NY	6,500		696		431
89-N-103 Advanced test reactor modifications Test Reactor Area, INEL, ID	3,100		332		206
89-N-104 Power system upgrade, Naval Reactors Facility, Idaho Falls, ID	6,400		685		425
88-N-102 Expended core facility receiving station, Naval Reactors Facility, ID	3,000		321		199
88-N-103 Material handling and storage					
88-N-104 Prototype availability facilities,					
F. Program direction	13,500		1,445		896
VI. OTHER NATIONAL SECURITY PROGRAMS					
A. Verification and control technology					
Operating expenses	159,146	52	17,029	6	10,561
Capital equipment	9,732		1,041		646
Construction:					
90-D-186 Center for national security and arms control, SNL, Albuquerque, NM	1,000		107		66
B. Nuclear safeguards and security					
Operating expenses	82,241	704	8,800	75	5,503
Capital equipment	4,967	2,800	531	300	515
C. Security investigations - OE	41,200		4,408		2,733
Defense Nuclear Safety Board	7,000		749		712
Miscellaneous Prior Year Projects		4,642		497	308
Reimbursable Activities		399,525		42,749	26,504
Account Total	9,663,034	471,675	1,033,945	50,469	672,584

Reader Aids

Federal Register

Vol. 54, No. 195

Wednesday, October 11, 1989

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, OCTOBER

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

15 CFR

769.....41439
770.....40861
771.....40861
776.....40640
779.....40643, 41055
799.....40861, 41055

Proposed Rules:

771.....40681
772.....40681
773.....40681
774.....40681
786.....40681
799.....40681
806.....41275

16 CFR

305.....41242

17 CFR

1.....41068
3.....41068
31.....41068
145.....41068
147.....41068
200.....40862
211.....41084

Proposed Rules:

240.....40395

18 CFR

154.....41085
294.....41086

19 CFR

171.....41364

Proposed Rules:

12.....40882
24.....40882
132.....40887
133.....40882
142.....40887

20 CFR

404.....40779
416.....40779

Proposed Rules:

404.....40570

21 CFR

Ch. I.....41363
177.....40383
442.....40651, 40653
453.....40654
455.....40384
510.....40656, 41441, 41713
522.....40656, 41441
540.....41441
544.....41441
555.....41441
558.....40657, 41713

Proposed Rules:

10.....41629
310.....40618, 41629
314.....41629
320.....41629
341.....40412
347.....40808
348.....40808
1316.....40888

22 CFR

514.....40386

Proposed Rules:

50.....41459

23 CFR

Proposed Rules:

658.....41278

24 CFR

1710.....40863

26 CFR

1.....41087, 41442
5h.....41243, 41364
602.....41087, 41243, 41442

29 CFR

1601.....40657
1910.....41364
1926.....41088

Proposed Rules:

1910.....41460, 41461

30 CFR

Proposed Rules:

7.....40950, 40995
70.....40950
75.....40950
917.....40413
925.....40414
943.....41281

31 CFR

317.....40830

33 CFR

100.....41088
165.....40868, 40869
241.....40578

Proposed Rules:

154.....41366
155.....41366
156.....41366
334.....40572

34 CFR

600.....40388

36 CFR

292.....41089

38 CFR

1.....40388, 40870
21.....40871

Proposed Rules:

3.....40684, 40686, 41110
21.....40687, 40688, 41110

40 CFR

35.....40798
52.....40657, 40659, 40660, 41094, 41443
60.....40662
61.....40662
81.....41094
123.....40664
180.....41098
261.....41402
271.....41402
300.....41000, 41015
302.....41402
403.....40664

Proposed Rules:

51.....41218
52.....40689, 40889, 41218, 41629
61.....40779, 41113
81.....41218
228.....40415
261.....41114
300.....40889

41 CFR

Ch. 101.....41244
101-6.....41214
101-47.....41099, 41244

42 CFR

405.....41716
411.....41716
412.....41716
489.....41716

43 CFR

Proposed Rules:

11.....41363

44 CFR

64.....40872

Proposed Rules:

67.....40890, 41631

46 CFR

50.....40590
56.....40590
61.....40590

Proposed Rules:

30.....41124
31.....41124
32.....41366
33.....41124
35.....41124, 41366
39.....41366
70.....41124
71.....41124
75.....41124
78.....41124
90.....41124
91.....41124
94.....41124
97.....41124
107.....41124
108.....41124
109.....41124
112.....41124
154.....41124
160.....41124
161.....41124
167.....41124
168.....41124
188.....41124
189.....41124
192.....41124
196.....41124
199.....41124
580.....40891
581.....40891

47 CFR

1.....40392
73.....40393, 40873-40875, 41100, 41445, 41446
300.....41447

Proposed Rules:

2.....41464
15.....41125, 41464
73.....40419, 40420, 40893-40896, 41125-41128, 41465-41470

48 CFR

1532.....40876
1552.....40876
2801.....40877
2813.....40877
2819.....40877

Proposed Rules:

20.....40420

49 CFR

171.....41447
172.....41447
191.....40878
195.....40878
219.....40879
383.....40782
391.....40782
531.....40665

Proposed Rules:

217.....40856
219.....40856
225.....40856
531.....40689
571.....40896, 41632, 41636
1022.....41643
1043.....41643
1044.....41643
1047.....41643
1051.....41643
1058.....41643
1061.....41643
1063.....41643
1067.....41643
1070.....41643
1080.....41643
1081.....41643
1083.....41643
1084.....41643
1085.....41643
1091.....41643
1104.....41643
1136.....41643
1143.....41643
1161.....41643
1167.....41643
1169.....41643
1170.....41643
1331.....41643

50 CFR

17.....41448
380.....40668
661.....41591, 41592
663.....41594
672.....40394, 41101
675.....40716, 41101

Proposed Rules:

17.....40444-40458, 41470-41475
23.....41282, 41475
24.....41295
216.....41654
222.....40699
228.....40703
264.....40779
265.....41296
611.....40716
641.....41297
650.....40463
651.....40466
672.....40716

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List October 6, 1989